



सत्यमेव जयते

आयुक्तकाकायालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeal Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.
GST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
Phone: 079-26305065 Fax: 079-26305136
E-Mail : commrappl1-cexamd@nic.in

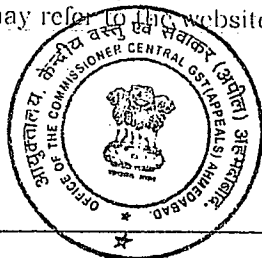


By Regd. Post

DIN NO.: 20231064SW0000777EC6

(क)	फाइल संख्या / File No.	GAPPI./ADC/GSTP/2564/2023 / 7028-28
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-CGST-003-APP-JC-36/2023-24 and 09.10.2023
(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	10.10.2023
(ङ)	Arising out of Order-In-Original No. 05/LOK/SUPDT/HMT-1/2023-24 dated 14.07.2023 passed by The Superintendent, CGST & C.Ex, Range-I, Division-Himmatnagar, Gandhinagar Commissionerate.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Hemeta Rolling Pvt. Ltd., Survery No. 28, Village - Dhandha, Idar Road, Behind Shital Weigh bridge, Himmatnagar, Sabarkantha, Gujarat - 38001

- (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.
- (C) Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017 after paying -
- (i) (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 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.
उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbic.gov.in को देख सकते हैं।
- (C) For elaborate, detailed and latest provisions relating to filing of appeal to the appellate authority, the appellant may refer to the website www.cbic.gov.in.



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

M/s. Hemeta Rolling Pvt. Ltd, Survey No. 28, Village-Dhandha, Idar Road, behind Shital Weighbridge, Himatnagar, Sabarkantha, Gujarat-383001, (hereinafter referred to as the "appellant") has filed the appeal on 28.08.2023 against Order-in-Original No. GST-05/Lok?Supdt/HMT-1/2023-24, dated 14.07.2023 (hereinafter referred to as the "impugned order") passed by the Superintendent, Central GST & C.Ex., Range-1, Division-Himmatnagar, Gandhinagar Commissionerate, Gandhinagar (hereinafter referred to as the "adjudicating authority") for wrong availment of Input Tax Credit in comparison to GSTR-2A with GSTR-3B, amounting to Rs. 2,33,148/- alongwith interest and penalty.

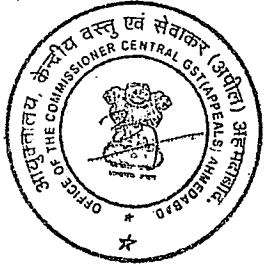
2(i). Brief facts of the case in the present appeal is that the appellant registered under GSTIN 24AABCH8039G1ZP, are engaged in the activity of supply of goods of HSN 72141090 (Other Bars and Rods of Iron or Non-alloy Steel, Not further worked that forged, Hot-Rolled, Hot-Drawn or Hot-Extruded, but including those twisted after rolling-forged: other). The taxpayer is also availing the facility of Input Tax Credit. The scrutiny of the returns of the appellant was conducted for the period from July 2017 to March 2018 as per SOP circulated by CBIC vide instruction No. 02/2022-GST dated 22.03.2022. Further, ASMT-10 dated 27.06.2022 (DIN- 20220664WU0000333EE6) was issued to the said taxpayer conveying the objection noticed during the scrutiny of returns. Difference between GSTR-2A v/s GSTR-3B, the appellant submitted a calculation sheet and C.Ex./S.Tax/VAT returns regarding ITC taken of Rs.21,13,280/-. Further, no satisfactory reply was submitted regarding difference of Rs. 2,33,148/- (Rs.23,46,428 -Rs.21,13,280). Hence, Rs.2,33,148/- in respect of GSTR-2A v/s GSTR-3B was required to paid along with interest/penalty as per CGST Rules, 2017 read with CGT Acts, 2017 as amended. Accordingly, the appellant was directed to pay/reverse the in-eligible ITC of Rs. 2,33,148/- alongwith interest and penalty.

Description	IGST	CGST	SGST	CESS	Total Tax
ITC as per GSTR 3B	89910	30476938	29116038	20904	59703790
ITC as per GSTR 2A	90600	28622929	28622929	20904	57357362
ITC allowed as transitional credit taken	0	1737090	376190	0	2113280
Excess ITC Availed	-690	116919	116919	0	233148

3. The appellant was further issued show Cause Notice vide F.No.GEXCOM/SoR/3103/2022 dated 30.09.2022 (DIN: 20220964WU000000D7E9). Further, the adjudicating authority passed the impugned order and confirm the demand to recover the ITC of amounting to Rs. 2,33,148/- (CGST Rs. 1,16,574/- and SGST Rs. 1,16,574/-) under the provisions of Sections 73(1) of the CGST Act read with the SGST Act, 2017 alongwith interest under Section 50(1) of the CGST Act read with the SGST Act, 2017 and penalty amounting to Rs. 23,314/- (CGST Rs. 11,657/- and SGST Rs. 11,657/-) under section 122(2)(a) of the CGST Act read with similar provision of SGST Act, for the following reasons :

- They referred the Provisions of Section 16(2), Section 38 and Section 155 of the CGST Act 2017;
- The taxpayer has not followed the above conditions. As the said conditions has to be mandatorily fulfilled by the appellant of ITC;

- The taxpayer in their reply has submitted that their supplier namely M/s. Milan Agro Tech Company Pvt. Ltd. (GSTIN:24AAGCM4485L1Z2) had made an amendment in the month of September 2018 regarding an invoice bearing no. 2678 dated 28.01.2018 of amounting to Rs.13,76,817/- (CGST: Rs.1,23,913/-, SGST: Rs.1,23,913/-) which was issued in the month of January 2018 to them and they have also paid the tax on the above said invoice. Further, they have submitted a letter received from M/s. Milan Agro Tech Company Pvt. Ltd., in which, they have submitted that the above said Invoice No.2678 dated 28.01.2018 has been mentioned in the month of January 2018 in the name of M/s. Shreeyam Power and Steel Industries Ltd. (GSTIN:24AAACM7130L1ZK), which was rectified in the month of September 2018;
- However, the taxpayer has not submitted documentary evidence fulfill the conditions for the availment of ITC in addition to this I find that as per the provision of Section 155 of CGST Act 2017, the burden of proving eligibility for claim of ITC lies on the availer of such ITC. In the instance case the said taxpayer has failed to produce any document to adduce their claim that the tax has actually been paid by their supplier of supplies made to them;
- that there is no such Invoice, bearing no. 2678 dated 28.01.2018 of amounting to Rs.13,76,817/- (CGST: Rs.123913/-, SGST: Rs.123913/-), reflecting in the FORM GSTR-2A in the month of January 2018 and September 2018 in the category of B2B or B2BA. Hence, the claim to avail of ITC on such invoice is not sustainable under Section 16 of CGST Act 2017;
- that the ITC of Rs. 2,33,148/- is wrongly availed in excess to the available Input Tax Credit as per GSTR-2A in contravention to Section 16(2)(c) of the CGST Act, 2017. The said taxpayer had 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;



4. Being aggrieved with the impugned order, the appellant preferred the present appeal on 28.08.2023 for the following reasons:

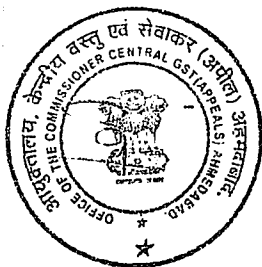
- that the adjudicating authority has erred in denying input tax credit on the sole reason that the appellant has not explained the difference of Rs.2,33,148/- as per GSTR-2A and GSTR-3B. The adjudicating authority has erred in denying the input tax credit amounting to Rs. 2,33,148/- on the ground that the appellant has wrongly availed in excess to the available Input Tax Credit as per GSTR-2A in contravention to Section 16(2)(c) of the CGST Act, 2017;
- that the adjudicating authority has failed to appreciate that the provision for matching of ITC as per GSTR-2A and GSTR-3B or restrictions regarding availment of ITC by the registered persons upto certain specified limit beyond the ITC available as per FORM GSTR-2A were provided under rule 36(4) of Central Goods and Services Tax Rules, 2017 only with effect from 9th October 2019. Before that, during the relevant time, a registered person was eligible for availing ITC subjected to fulfilment of provisions of Section 16 of the CGST Act, 2017;
- that the appellant has fulfilled all the above conditions as Section 16(2) as he is having possession of tax invoice, he has received the goods and the tax charged in respect of

such supply of goods has been actual paid to the Government and has furnished return under Section 39. The appellant submits that neither in the show cause notice nor in the impugned order it has been alleged that the appellant is not in possession of tax invoice or he has not received the goods as per the invoice or he & has not filed return under Section 39 or the tax has not been paid on the goods;

- The appellant submits that, the adjudicating authority has made cardinal error in denying the ITC to the appellant only on the ground of difference between GSTR-2A and GSTR-3B. The appellant submitted before the adjudicating authority that said difference was due to the fact that their supplier namely M/s. Milan Agro Tech Company Pvt. Ltd. while filing GSTR-1, has shown Invoice No.2678 dated 21.01.2018 (Annexure-D) of taxable value of Rs.13,76,817/- (CGST:Rs.1,23,913/-, SGST:Rs.1,23,913/-) shown in the name of another recipient of M/s. Milan Agro Tech Company Pvt. Ltd. in the month of January 2018. The supplier of goods have filed an amendment in GSTR-1 M in the month of September 2018. The appellant also produced a certificate (Annexure-E) in this regard from M/s. Milan Agro Tech Company Pvt. Ltd in which they have also clarified that they have has made the payment of Tax in the month of January- 2018. However, the adjudicating authority has not considered any of the submissions and arbitrarily denied ITC credit. Therefore, the impugned order has suffered infirmity and is bad in law;

The appellant submits and the adjudicating authority has also erred in dealing the issue of difference in Input Tax Credit (ITC) availed in FORM GSTR-38 as compared to that detailed in FORM GSTR-2A for FY 2017-18 and 2018-19 as per the procedure laid down by the CBIC. Appellant submits that vide Circular No. 183/15/2022-GST dated 27.12 2022, CBIC has issued clarification to deal with the 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. The adjudicating authority has decided the issue without considering the above clarification issued by the Board and hence the impugned order is bad in law and is required to be quashed and set aside.;

- that he is in possession of tax paying document in the form of Invoice No.2678 dated 21.01.2018 (Annexure-D) of taxable value of Rs.13,76,817/- (CGST: Rs.1,23,913/-, I SGT:Rs.1,23,913/-) issued by M/s. Milan Agro Tech Company Pvt. Ltd and the goods covered in the invoice were received in his premises. He has also made payment of the value of goods covered in the invoice. As such he has fulfilled all the conditions as prescribed under paragraph 4 of above mentioned circular. Further, the appellant has also produced a certificate from the supplier of goods viz. M/s. Milan Agro Tech Company Pvt. Ltd, to the effect that the goods have been supplied and tax was paid on 'such goods, as provided under paragraph 4.1.2 of the circular;
- In the present case the difference between the ITC claimed in Form GSTR-3B and Form GSTR-2A is less than Rs.5 lakhs, the adjudicating authority ought to have considered the certificate given by the supplier of goods and he ought to have allowed the ITC credit.
- that the appellant has availed ITC credit legally and on fulfilling the conditions as prescribed under Section 16 of the CGST Act, 2017. As such there is no violation of



CGST Act or Rules and, therefore, he is not liable for any interest or penalty under CGST/SGST Act, 2017. Hon'ble Appellate Authority may, therefore, set aside the penalty imposed on the appellant.

PERSONAL HEARING :

5. Personal hearing in the present appeal was held on 03.10.2023. Shri M.H.Raval, Consultant, Authorized Representative appeared in person on behalf of the appellant in the present appeal. During P.H. they have submitted that all conditions of Section 16(2) of CGST Act have been fulfilled. Also direction given Circular No. 183/15/2022 dated 27.12.2022. Therefore the appeal may be allowed. He further reiterated the written submission.

DISCUSSION AND FINDINGS:

6. 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 whether the appellant had wrongly availed Input Tax Credit in comparison to GSTR-2A with GSTR-3B, amounting to Rs. 2,33,148/- alongwith interest and penalty.

7(i). I find that in the instant case adjudicating authority is contending that the appellant has contravened the provisions of Section 16 of CGST Act 2017. 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;

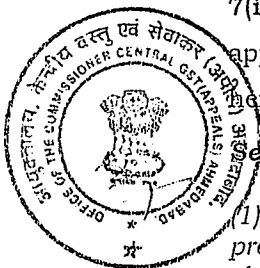
1[(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;]

(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:

7(ii). In this regard, I find that the adjudicating authority in the impugned order has mentioned that the appellant in their reply has submitted that their supplier namely M/s. Milan Agro Tech Company Pvt. Ltd. (GSTIN: 24AAGCM4485L1Z2) had made an amendment in the month of September 2018 regarding an invoice bearing no. 2678 dated 28.01.2018 of amounting to Rs.13,76,817/- (CGST: Rs.1,23,913/-, SGST: Rs.1,23,913/-) which was issued in the month of January 2018 to them and they have also paid the tax on the above said invoice. Further, they have submitted a letter received from M/s. Milan Agro Tech Company Pvt. Ltd., in which, they have submitted that the above said Invoice No.2678 dated 28.01.2018 has been mentioned in the month of January 2018 in the name of M/s. Shreeyam Power and Steel Industries Ltd (GSTIN: 24AAACM7130L1ZK), which was rectified in the month of September 2018. However, the taxpayer has not submitted documentary evidence to fulfill the conditions for the availment of ITC. In this regard I find that the appellant has invoice bearing no. 2678 dated 28.01.2018 of amounting to Rs.13,76,817/- (CGST: Rs.1,23,913/-, SGST: Rs.1,23,913/-) which was issued in the month of January 2018 to M/s. Milan Agro Tech Company Pvt. As per available documents I find that M/s. Milan Agro Tech Company Pvt has given the declaration to the appellant stating that they have sold MS Billets vide invoice no. 2678 dated 28.01.2018, but by mistake this invoice no. was mentioned in GSTR-1 of January 2018 in the name of M/s. Shreeyam Power and Steel Industries Ltd, having GSTIN: 24AAACM7130L1ZK, value of Rs.13,76,817/- (CGST: Rs.1,23,913/-, SGST: Rs.1,23,913/-). Further they stated that they had rectified in GSTR-1 of September 2018 and they have also paid GST amount on this invoice. In view of the above I find that the appellant has fulfilled the provisions of Section 16 of the CGST Act, 2017.

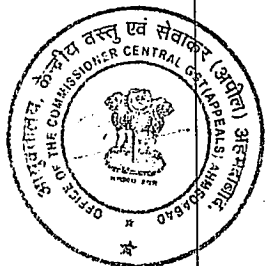
8(i). Further I find that the appellant while filing APL-01 and during the course of personal hearing, coated the benefit of Circular No. 183/15/2022-GST issued on 27/12/2022 by The Central Board of Indirect Taxes and Customs, Department of Revenue, Ministry of Finance, Government of India which deals 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:

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:

Sr. No.	Scenario	Clarification
a.	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.



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

Besides, 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 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 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

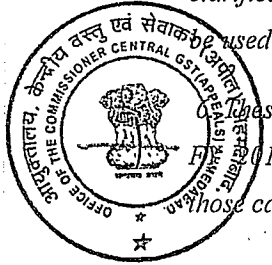
5 lakh, the proper officer shall ask the registered person to produce a certificate for the concerned supplier from the Chartered Accountant (CA) or the Cost Accountant (CMA), certifying that supplies in respect of the said invoices of supplier have actually been made by the supplier to the said registered 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-udin> and that issued by CMAs can be verified from ICAI website <https://icmai.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.

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.



8(ii). 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. D) and clause no. 4.1.2. As per Sr. No. D of the said circular dated 27.12.2022, 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 the procedure provided in para 4 as mentioned above. 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.

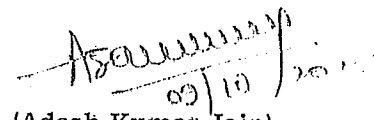
8(iii). While gone through the facts of the case and written submissions made by the appellant I find that Supplier, i.e. M/s. Milan Agro Tech Company Pvt. Ltd. (GSTIN: 24AAGCM4485L1Z2)) has made inadvertent error, as they furnished their outward supply to M/s. Shreeyam Power and Steel Industries Ltd, having GSTIN:

24AAACM7130L1ZK, instead of the appellant being buyer of the goods and uploaded details of consignee in GSTR-1 instead of showing details of the appellant hence, there is mismatch between Input Tax Credit (ITC) availed in GSTR-3B and ITC reflected in GSTR-2A, such mistake already rectified by the supplier in his GSTR-1 of January 2018, however their supplier, i.e. M/s. Milan Agro Tech Company Pvt. Ltd. had rectified in their GSTR-1 of September 2018 month return.

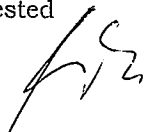
9. In view of the above, I find that the appellant have submitted the proper documents during filing of APL 01 form in this office. Hence, the impugned order disallowing the demand of Input Tax Credit (ITC) by the adjudicating authority under Section 73(1) needs to be set-aside, in terms of Circular No.183/15/2022-GST dated 27.12.2022.

10. In view of above discussions, 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 also take up the matter with concerned jurisdictional officer as provided under point (d) of Circular No.183/15/2022-GST dated 27.12.2022.

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.


(Adesh Kumar Jain)
Joint Commissioner (Appeals)
Date: 09.10.2023

Attested


(Sandheer Kumar)
Superintendent (Appeals)

By R.P.A.D.

To
M/s. Hemeta Rolling Pvt. Ltd,
Survey No. 28, Village-Dhandha,
Idar Road, behind Shital Weighbridge,
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-1, 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.



