



सत्यमेव जयते

आयुक्त (अपील) का कार्यालय,  
Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

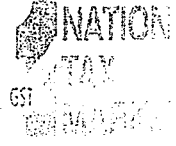
Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या File No : GAPPL/ADC/GSTP/2038/2023 -APPEAL 12900-0906

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-003-APP-JC-41/2023-24**

दिनांक Date : **27.10.2023** जारी करने की तारीख Date of Issue : 06.11.2023

श्री आदेश कुमार जैन संयुक्त आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. 02/Supdt-AR-II/GNR-Adj/2022-23 dated 06.03.2023

issued by The Superintendent, CGST, AR-II, Division-Gandhinagar, Gandhinagar Commissionerate

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

Appellant	Respondent
M/s Classic Construction, 374/1, Ekta Chowk, Sector 8, Gandhinagar - 382007	The Superintendent, CGST, AR-II, Division- Gandhinagar, Gandhinagar Commissionerate

(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.cbic.gov.in">www.cbic.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.cbic.gov.in">www.cbic.gov.in</a> .



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

M/s Classic Construction, 374/1, Ekta Chawk, Sector-8, Gandhinagar, Gujarat-382007 (hereinafter referred to as the "appellant") has filed the appeal on 06.06.2023 against Order-in-Original No. 02/Supdt-AR-II/GNR-Adj/2022-23 dated 06.03.2023 (hereinafter referred to as the "impugned order") passed by the Superintendent, Central GST & C.Ex., Range-II, Division- Gandhinagar, Gandhinagar Commissionerate (hereinafter referred to as the "adjudicating authority") for Short payment of Tax amounting to Rs. 11,82,080/- and Excess availment of Input Tax Credit ('ITC') amounting to Rs. 39,126/-.

**2(i).** Brief facts of the case in the present appeal is that the appellant registered under GSTIN 24AACFC1962B1Z3, is engaged in construction services in respect of commercial or industrial buildings and civil structures falling under HSN Code 70161000.

**2(ii).** During the course of scrutiny, on reconciliation of sales shown in GSTR-1 and GSTR-3B, it was found that from July 2017 to March' 2018, the outward tax liability shown in GSTR-1 is Rs.51,89,346/- (IGST+CGST +SGST) whereas in GSTR-3B, the outward tax liability discharged is Rs.40,07,266/- (IGST+CGST +SGST). The difference in tax as per GSTR-1 and the tax discharged as per GSTR-3B is Rs. 11,82,080/- by contravened the provisions of sub-section (1) to Section 39 of the CGST Act, 2017.

**2(iii).** It was noticed that the "appellant" had availed ITC in GSTR 3B return/Column No 8 B (Pt III) to GSTR 9 return which was in excess to what was available to them under GSTR 2A. The details of Integrated Goods and Services Tax ('IGST'), Central Goods and Services Tax ('CGST) and State Goods and Services Tax ('SGST) (collectively ITC), wrongly availed by them, are tabulated as under:

Particulars	Return	IGST	CGST	SGST
ITC reflected in	GSTR-9, P-III, 8A and GSTR 2A	35286	1170388	1170388
ITC reflected in	GSTR-2A	0	1168468	1168468
ITC not admissible	ITC available in their GSTR admissible 3B return minus ITC available in their GSTR 2A return	<b>35286</b>	<b>1920</b>	<b>1920</b>

The appellant has availed excess ITC amounting to Rs. 39,126/- [Rs. 35286/- (IGST) + Rs. 1920/- (CGST) + Rs. 1920/- (SGST) ] by contravened the provisions of Sections. 16(1)/16(2)(a) of the Act read with the provisions of Section 20 of the IGST Act. They have wrongly availed the ITC in excess to what was available and Section 39(7) of the Act read with the provisions of Rule 85(3) of the CGST Rules 2017 and

Rule 85(3) of the GSGST Rules, 2017 (collective 'Rules') and have failed to reverse the ITC wrongly availed by them within the prescribed due dates.

3. The appellant stated that they were not agreed with the above observations. The appellant was further issued show Cause Notice vide F.No. GEXCOM/SCN/GST/231/2022-GST-RANGE-2-DIV-GNR (DIN: 20220664WU000000F992) dated 16.06.2022. Further, the adjudicating authority passed the impugned order dated 06.03.2023 and

(i) confirm the demand of Short payment of duty amounting to Rs. 11,82,080/- [IGST + CGST + SGST], under the provision of Sections 73(1) of the Act read with Section 76(2) of CGST Act, 2017, interest under the provisions of Section 50(1) of CGST Act, 2017 read with the relevant provisions of Gujarat GST Act, 2017 and provisions of Section 20 of IGST Act, 2017 and penalty of Rs. 1,18,208/- under the provisions of Sections 73(1) of the Act readwith the provisions of Section 122(2)(a) of the, CGST Act, 2017 on the proposed demand and;

(ii) confirm the demand of excess availment of Input Tax Credit ('ITC') amounting to Rs. 39,126/- (Rs.35,286/- (IGST) + Rs.1,920/- (CGST) + Rs.1,920/- (SGST)) to be recovered under the provisions of Sections 73(1)" of the Act read with the provisions of Section 20 of the IGST Act, 2017 alongwith interest under the provisions of Section 50(1) of CGST" Act, 2017 read with read with the relevant-provisions of Gujarat GST Act, 2017 ' and provisions of Section 20 of IGST Act, 2017 on the GST liability for the following reasons:

For Short payment of Tax amounting to Rs. 11,82,080/-:

*The outward tax liability as per GSTR-1 is Rs. 51,89,346/- and GSTR-3B is Rs. 40,07,266/-. Hence, they have made short payment of Tax of Rs. 11,82,080/- in terms of the provisions of Section 39(1) of the CGST Act 2017;*

- \* *In GSTR-9 they have shown tax liability of Rs. 42,32,728/- which is contradictory to GSTR-1;*
- \* *That though the notice has filed both annual return i.e. GSTR-9 and GSTR-9C for the tax period 2017-18 yet failed to true assess the tax liability;*
- \* *The taxpayer had sufficient opportunity to true assess the tax liability and modify the mistake committed in the previous monthly returns but the notice failed to do so and thus advertently suppress the facts and had short paid the tax liability;*

(ii) Excess availment of Input Tax Credit ('ITC') amounting to Rs. 39,126/-.

- \* they have availed excess ITC amounting to Rs. 39,126/- in GSTR-3B over GSTR-2A in contravention to section 16(2)(c) of the CGST Act, 2017 read with the provisions of Rule 36 of the CGST Rules, 2017;
- \* for availed excess ITC amounting to Rs. 39,126/-, proper explanation is not provided by the registered person;
- \* they had an opportunity to reversed 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 discharging their tax liability this make himself liable to recovery of ITC to the tune of Rs. 39,126/- under the provisions of Section 73(1) of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017 alongwith applicable interest under section 50(1) of the CGST Act, 2017 and penalty under section 122(2)(a) of the CGST Act, 2017.

4. Being aggrieved with the impugned order, the appellant preferred the present appeal on 06.06.2023 for the following reasons:

(i) Contention for Demand raised for the difference in tax payable as per GSTR and GSTR 3B:-

The appellants would submit first and foremost that the show cause notice and the impugned order has been passed in violation of the principles of natural justice. Therefore the impugned order is not maintainable and is required to be quashed and set aside.

- \* the appellants paid tax of Rs. 73,020/- vide DRC 03 dated 13-06-2022. However the reply to notice submitted and tax paid by DRC 03 are not considered by the adjudicating authority while issuing the show cause notice;

- \* The difference in tax payable in GSTR 1 and GSTR 3B has arisen due to clerical mistakes made while filing GSTR 1 return;

- \* The difference in tax liability of Rs. 11,82,080/- arose due to three invoices wrongly reported in GSTR1. The difference has arisen due to clerical errors made while filing GSTR1 return. However the tax is appropriately paid;

- \* The details of error made while filing GSTR 1 of Nov 2017 is as under:

Particulars	Invoice No	Taxable Value	CGST	SGST	Total Tax
As per GSTR-1	03	61,41,773	552760	552760	1105520
As per invoice	03	6470796	388247	388247	776949
Difference		329023	164513	164513	329026

Particulars	Invoice No	Invoice Value	Taxable Value	CGST	SGST	Total Tax
As per GSTR-1	15	35,60,226	31,78,773	1,90,729	1,90,729	3,81,458
As per invoice	15	31,78,773	28,38,190	1,70,291	1,70,291	3,40,582
Difference				20,438	20,438	40,876

\* *Performa Invoice was issued on Gujarat State Electricity Corporation Limited in January 2018. However the same was only proforma invoice and the same was not recorded as sales in the books of accounts during the F.Y. 2017-18. The actual tax invoice No. 08 was issued in February 2018. But while filing GST Returns of January 2018 the proforma invoice wrongly reported in GSTR 1 and GSTR 3B and GST of Rs.7,78,288/- was wrongly paid. Again in February 2018 when tax invoice was issued and the GST was paid on the same. Hence the tax payment was made twice while filing GST returns of January 2018 and February 2018. Thus there was excess payment of tax paid on proforma invoice which need to be adjusted.*

**(ii) Contention for Excess Availment of ITC:-**

\* *The difference of ITC of Rs. 39,126/ was mentioned in scrutiny notice dated 27-04- 2022; that they had accepted the difference and have already paid the same through DRC 03 dated 13-06-2022. Hence there is no any liability to be paid on account of excess ITC availed.*

\* *Scrutiny notice showing ITC difference of Rs. 39,126/- does not have bifurcation of applicable tax head showing difference in ITC i.e. IGST, CGST or SGST. Hence they had paid the excess ITC availed by bifurcating the same into CGST and SGST. However the adjudicating authority has mentioned in head wise ITC difference in the SCN i.e. Rs. 35,286/- in IGST, and Rs. 1,920 in CGST & SGST each. However*

*had already reversed the ITC through DRC 03 Dt 13-06-2022 before issue of the*  
 Hence the same should be appropriated against the difference ITC of Rs. 39,126/- as demanded in SCN Dt. 14-06-2022;

*Adjudicating authority denied to accept the ITC reversed by us on the grounds that ITC to be reversed did not pertain to demand of differential ITC as per SCN as we reversed the ITC of Rs. 39,126/- in CGST & SGST each whereas the demand raised in SCN pertains to ITC reversal of Rs. 35,286/- in IGST and Rs. 1,920 in CGST & SGST each. However as mentioned above we had already reversed ITC of Rs. 39,126/- before issues of SCN as the bifurcation of ITC was not provided before issue of SCN. Hence we request to appropriate the same against the demand of differential ITC;*

\* *That GST rolled out with effect from 1st July, 2017. Further there was lots of confusion regarding filing of GSTR 3B and GSTR 1 returns during the initial period. Hence the appellants had made clerical mistakes while filing GSTR 1 returns due to which such difference in tax payable has arise The said discrepancies was explained to adjudicating authority at the time of Hearing. However the adjudicating authority has not considered our submissions and explanations and raised demand wide present order dated 06-03-2023. Hence we would like to mention that the present adjudicating authority has ignored the actual facts and merely issued demand on the basis of assumptions and presumptions;*

**Additional submissions:**

4(ii). The appellant has further submitted the additional submission on 20.09.2023 and contended on the following points:-

- That APMC (The Agricultural Product Market Committee) receiver of service, has declared that the invoice no. 3 dated 02.11.2017 was issued on APMC charging GST @12%. However while filing GSTR1 of November 2017 it was wrongly reported in GST rate column 18% instead of 12% due to which excess GST was reported in GSTR 1;
- The invoice no. 15 dated 31.03.2018 was issued on APMC charging GST @12%. However while filing GSTR1 of March 2018 the invoice value was wrongly reported as taxable Value as a result excess GST was reported in GSTR1;
- That APMC declared that they have not availed any excess ITC over and above the GST mentioned in the invoice and also that no excess payment was made to Classic Construction;
- That APMC declared that they have not availed ITC on invoice issued by classic construction as APMC is not registered in GST. They also given confirmation that payment is made to Classic Construction as per the amount mentioned in invoice no. 3 and invoice no. 15 and no excess amount is paid to Classic Construction.

While filing GST return for the month of January 2018 the Performa Invoice issued on Gujarat State Electricity Corporation limited was wrongly reported in GSTR 1 and GSTR 3B and tax was paid on such performa invoice. Further when the invoice was issued in February 2018 the GST was paid on the same. Thus it leads to excess payment of tax.

- The appellant has referred Circular No. 26/26/2017-GST dated 29.12.2017. That they wrongly paid GST on performa invoice issued on Gujarat State Electricity Corporation limited. Thus the excess tax paid shall be allowed to be adjusted as per the said Circular.

**PERSONAL HEARING :**

5. Personal hearing in the present appeal was held on 14.08.2023 and 23.08.2023. Shri Bhavesh T. Jhalawadia, C.A., Authorized Representative appeared in person on behalf of the appellant in the present appeal. During P.H. he has submitted additional submission and point wise submission alos. He also reiterated the points/issue mentioned in appeal memo. He further requested for 15 days time to give submission and case laws, which has been allowed. Accordingly, they have submitted the additional submission on 20.09.2023.

**DISCUSSION AND FINDINGS:**

6. I have gone through the facts of the case, written submissions made by the 'appellant'. It is observed that the main issue to be decided in the instant case is whether (i) the appellant had made short payment of Tax amounting to

Rs. 11,82,080/- as per reconciliation of GSTR-1 and GSTR-3B and (ii) the appellant had made excess availment of Input Tax Credit (ITC) amounting to Rs. 39,126/- as per GSTR-2B and GSTR-2A or not.

7(i). Regarding the issue in Para 3(i), it is observed that the appellant shown the outward tax liability as per GSTR-1 is Rs. 51,89,346/-, GSTR-3B is Rs. 40,07,266/- and as per GSTR-9 Rs. 42,32,728/-. The appellant in this regard stated that the difference in tax liability of Rs. 11,82,080/- arose due wrongly reported in GSTR-1. The appellant further paid the amount of Rs. 33,894/- vide DRC-03. So the actual difference in tax liability is Rs. 11,48,186/- due to difference between GSTR-1 and GSTR 3B for the month of November 2017 of Rs. 3,29,024/- (GSTR-1: Rs. 1105518/- minus GSTR-3B: Rs. 776494/-) and difference between GSTR-1 and GSTR 3B for the month of March 2018 of Rs. 10,28,866/- (GSTR-1: Rs. 10,28,866/- minus GSTR-3B: Rs. 0/-). The difference has arisen due to clerical errors made while filing GSTR1 return.


7(ii). In respect of difference between GSTR-1 and GSTR 3B for the month of November 2017 of Rs. 3,29,024/- (GSTR-1: Rs. 1105518/- minus GSTR-3B: Rs. 776494/-) and after verification of GSTR1 and GSTR 3B returns on GST portal it is observed that in the month of November 2017 the appellant had a single outward supply of invoice no. 03 dated 02.11.2017, issued to APMC (The Agricultural Product Market Committee). The appellant contended that while filing GSTR1 of November 2017 it was wrongly reported in GST rate column 18% instead of 12% due to which excess GST was reported in GSTR-1. It is observed that the due to clerical mistake appellant had wrongly shown tax liability in GSTR1 of Rs. 11,05,520/- (CGST Rs. 5,52,760/- and SGST Rs. 5,52,760/-), as they have wrongly calculated tax rate of 18% (9% in CGST and 9% in SGST). As per Sr. No. 3 (vi)(a) of Notification No. 11/2017 CT(Rate) dated 28.06.2017 the GST rate applicable is 12%. However after verification of said invoice, it is observed that the appellant has properly applied tax rate of 12% (6% in CGST and 6% in SGST). Accordingly, the correct tax liability comes to Rs. 7,76,494/- (CGST Rs. 3,88,247/- and SGST Rs. 3,88,247/-), which appellant has properly shown in GSTR-3B. Further the recipient of service i.e. APMC (The Agricultural Product Market Committee) in their declaration letter dated 01.09.2023 stated that they are not registered in GST thus the question to avail ITC @ 18% does not arise.

7(iii). Appellant further contended that in the month of January 2018 they have issued Performa Invoice (third invoice) to Gujarat State Electricity Corporation Limited. However the same was only proforma invoice and the

same was not recorded as sales in the books of accounts during the F.Y. 2017-18. The actual tax invoice No. 08 was issued in February 2018. But while filing GST Returns of January 2018 the proforma invoice wrongly reported in GSTR 1 and GSTR 3B and GST of Rs.7,78,288/- was wrongly paid. Again in February 2018 when tax invoice was issued and the GST was paid on the same. Hence the tax payment was made twice while filing GST returns of January 2018 and February 2018. Thus there was excess payment of tax paid on proforma invoice which need to be adjusted.

In this regard, it is observed that the appellant has failed to produced proper documents to justify that the proforma invoice wrongly reported in GSTR 1 and GSTR 3B and GST of Rs.7,78,288/- in the month of January 2018 was wrongly paid.

7(iv). In respect of difference between GSTR-1 and GSTR 3B for the month of March 2018 of Rs. 10,28,866/- (GSTR-1: Rs. 10,28,866/- minus GSTR-3B: Rs. 0/-) and after verification of GSTR1 and GSTR 3B returns on GST portal it is observed that in the month of March 2018, as per GSTR-1 the appellant had total outward tax liability of Rs. 10,28,866/- (CGST: Rs. 514433/- and SGST: Rs. 514433/-), the details are as under:



Invoice No	Date	Taxable Value	CGST	SGST
	11/12.03.2018	210335	18930.15	18930.15
	13/31.03.2018	2091300	188217	188217
	12/16.03.2018	1037718	93394.62	93394.62
	B2C	257389	23165.01	23165.01
	B2C(invoice no. 15, dated 31.03.2018)	3178773	190726.38	190726.38
	Total	6775515	514433.16	514433.16

As per GSTR-3B the appellant has shown total outward supply Nil. Hence, the appellant in the month of March 2018 has not discharged the tax liability of Rs. 10,28,866/-. Thus it is observed that the appellant has contravened Section 39(1) of the CGST Act, 2017 and failed to pay the collected tax to Government as per Section 76(1) of the CGST Act, 2017. The recipient of service i.e. APMC (The Agricultural Product Market Committee) in their declaration letter dated 01.09.2023 stated that they are not registered in GST thus the question to avail ITC does not arise.

7(v). In view of the above, it is observed that the appellant has made short payment of tax of Rs. 10,28,866/- (CGST Rs. 5,14,433/- and SGST Rs. 5,14,433/-) under the provision of Sections 73(1) of the Act read with Section 76(2) of CGST Act, 2017, interest under the provisions of Section 50(1) of CGST Act, 2017 read with the relevant provisions of Gujarat GST Act, 2017 and provisions of Section 20 of IGST Act, 2017 and penalty of Rs. 1,02,887/- under the provisions of Sections 73(1) of the Act read with the provisions of Section 122(2)(a) of the, CGST Act, 2017 on the proposed demand.



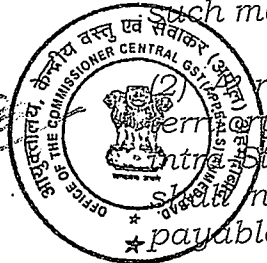
8(i). Regarding the issue in Para 3(ii), it is observed that the contention is that whether the appellant had availed excess ITC amounting to Rs. 39,126/- in GSTR-3B over GSTR-2A in contravention to section 16(2)(c) of the CGST Act, 2017 read with the provisions of Rule 36 of the CGST Rules, 2017. Tabulated as under:

Particulars	Return	IGST	CGST	SGST
ITC reflected in	GSTR-9, P-III, 8A and GSTR 2A	35286	1170388	1170388
ITC reflected in	GSTR-2A	0	1168468	1168468
ITC not admissible	ITC available in their GSTR admissible 3B return minus ITC available in their GSTR 2A return	35286	1920	1920

In view of above facts, I refer to provisions of CGST Act, 2017 relating to subject case which is as under:

**Section 19. Tax wrongfully collected and paid to Central Government or State Government. -**

(1) A registered person who has paid integrated tax on a supply considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall be granted refund of the amount of integrated tax so paid in such manner and subject to such conditions as may be prescribed.



(2) A registered person who has paid central tax and State tax or Union territory tax, as the case may be, on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall not be required to pay any interest on the amount of integrated tax payable.

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 77. Tax wrongfully collected and paid to Central Government or State Government.-**

(1) A registered person who has paid the Central tax and State tax or, as the case may be, the Central tax and the Union territory tax on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed.

(2) A registered person who has paid integrated tax on a transaction considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall not be required to pay any interest on the amount of central tax and State tax or, as the case may be, the Central tax and the Union territory tax payable.

8(ii). On going through the documents received by the appellant and on the basis of impugned order, it is observed that the appellant had accepted the view of the department that they had wrongly availed the difference of ITC of Rs. 39,126/-. Further they stated that they had paid the same through

DRC 03 dated 13-06-2022 bearing ARN No.-AD240622004962C and the reason quoted for payment is as under:

“Tax liability paid regarding Scrutiny notice F. No. AR-II/Scrutiny-2017-18/GST/2022-23 dated 27.04.2022 for F.Y. 2017-18”. Hence there is no any liability to be paid on account of excess ITC availed.

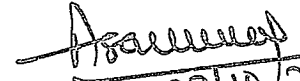
8(iii). Further, it is observed that the appellant had made the payment through DRC 03 dated 13-06-2022 of Rs. 73,020/- [Rs. 36,510/- (CGST) + Rs. 36,510/- (SGST)]. However, the actual liability of excess ITC amounting to Rs. 39,126/- [Rs. 35286/- (IGST) + Rs. 1920/- (CGST) + Rs. 1920/- (SGST)]. I find that the appellant had paid the tax of Rs. 39,126/- [Rs. 35286/- under IGST, Rs. 1920/- under CGST and Rs. 1920/- under SGST. However, they had paid Rs. 73,020/- [Rs. 36,510/- under CGST + Rs. 36,510/- SGST) head whereas the demand raised in pertains to ITC reversal of Rs. 35,286/- in IGST and Rs. 1,920/- in CGST & SGST each. Hence it is observed that since the appellant had accepted the view of the department that they had wrongly availed the difference of ITC of Rs. 39,126/- accordingly the demand could not be appropriated under the respective heads, as there is no such provisions in the CGST Act or Rules made there under to adjust the tax by way of suo-moto adjustment other than above. In view of the above, it is observed that appellant is liable to pay liability of excess ITC amounting to Rs. 39,126/- [Rs. 35286/- (IGST) + Rs. 1920/- (CGST) + Rs. 1920/- (SGST)] and appellant shall claim refund the amount of taxes so paid in such manner and subject to such conditions as may be prescribed.

8(iv). In view of above the demand of excess availment of Input Tax Credit ('ITC') amounting to Rs. 39,126/- (Rs. 35,286/- (IGST) + Rs. 1,920/- (CGST) + Rs. 1,920/- (SGST)) to be recovered under the provisions of Sections 73(1) of the Act read with the provisions of Section 20 of the IGST Act, 2017 alongwith interest under the provisions of Section 50(1) of CGST Act, 2017 read with the relevant provisions of Gujarat GST Act, 2017 and provisions of Section 20 of IGST Act, 2017.

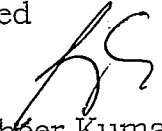
9. The appellants further raised that department has passed the impugned order in violation of the principles of natural justice. Therefore the impugned order is not maintainable and is required to be quashed and set aside. In this regard, it is observed that the appellant was given an opportunity to be heard in person on dated 10.10.2022 and 02.02.2023 and their authorized representative also appeared on 02.02.2023.

11. In view of the above discussions, I uphold:
- (i) the demand of short payment of tax amounting to Rs. 10,28,866/- and drop the demand of Rs. 1,53,214/- (Rs. 11,82,080/- minus Rs. 10,28,866/-) under the provision of Sections 73 of the Act read with Section 76(2) of CGST Act, 2017 alongwith interest under the provisions of Section 50(1) of CGST Act, 2017 and penalty of Rs. 1,02,887/- under the provisions of Sections 73 of the CGST Act, 2017. Further I order to appropriate Rs. 73,020/- already paid through ITC credit ledger vide Debit Entry No. D12406220032920 dated 13.06.2022 under DRC-03, towards the tax liability of Rs. 10,28,866/- .
- (ii) the demand of excess availment of Input Tax Credit ('ITC') amounting to Rs. 39,126/- (Rs.35,286/- (IGST) + Rs.1,920/- (CGST) + Rs.1,920/- (SGST)) under the provisions of Sections 73 of the CGST Act, 2017.

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.

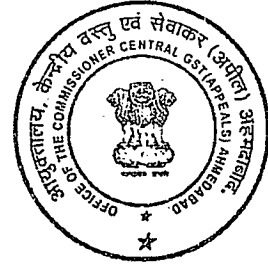
  
22/10/2023  
(Adesh Kumar Jain)  
Joint Commissioner (Appeals)  
Date: 27.10.2023

Attested

  
(Sandheer Kumar)  
Superintendent (Appeals)

By R.P.A.D.

To  
M/s Classic Construction,  
374/1, Ekta Chawk,  
Sector-8, Gandhinagar,  
Gujarat-382007.



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-Gandhinagar, Gandhinagar Commissionerate.
5. The Supdt., CGST & C.Ex, Range-II, Division-Gandhinagar, Gandhinagar Commissionerate.
6. The Supdt.(Systems), CGST Appeals, Ahmedabad.
7. Guard File
8. P.A. File.



