



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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DRN- 202311645W000099880

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या File No : GAPPL/ADC/GSTP/2874/2023-APPEAL / 12/10/2023

ख अपील आदेश संख्या Order-in-Appeal Nos. **AHM-CGST-003-APP-JC- 48 /2023-24**

दिनांक Date : **20.11.2023** जारी करने की तारीख Date of Issue : **24.11.2023**

श्री आदेश कुमार जैन संयुक्त आयुक्त (अपील) द्वारा पठाया

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

ग Arising out of Order-in-Original No. **02/AC/DEM/MEH/GST/Tarun Kumar Industries/2023-24** dt. **31.07.2023** issued by The Assistant Commissioner, CGST, Division Mehsana, Gandhinagar Commissionerate.

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

Appellant	Respondent
M/s Tarun Kumar Industries (Legal Name – Vinod Kumar Gokaldas prajapati), Plot No. 132, Gozaria GIDC, Dist. Mehsana, Gujarat – 382825.	The Assistant Commissioner, CGST, Division Mehsana, Gandhinagar Commissionerate

(A)	इस आदेश(अपील) से व्यथित कोई व्यक्ति किम्नलिखित 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, Fines, 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.
(C)	उपरोक्त अपीलकर्ता प्राधिकारी को अपील दायित्व करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रायधानों के लिए, अपीलकर्ता 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. Tarun Kumar Industries, Legal Name: Vinod Kumar Gokaldas Prajapati, Plot No. 132, Gozaria GIDC, Dist: Mehsana, Gujarat-382825 (hereinafter referred to as "the appellant"), holding GST Number 24ABJPP9767D1Z9 has filed appeal against Order-In-Original No. 02/AC/DEM/MEH/GST/Tarun Kumar Industries/2023-24, dated 31.07.2023 (hereinafter referred to as the "impugned order") passed by the Assistant Commissioner, CGST & C.Ex., Division- Mehsana, 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 of Sulphates; Alums; Persulphates) Peroxosulphates - other sulphates of copper. An investigation was conducted in the case of M/s. Ankur Trading, Ahmedabad (GST No.24BHCPA3520K1ZW) by the Officers of CGST Ahmedabad South Commissionerate, wherein, it was revealed that no such firm was functioning at the given premises, which indicates that M/s. Ankur Trading was operating only on paper and had issued sales invoices without supplying of goods with an intent to pass illegal input tax credit. The said firm was fictitiously floated on the base of forged documents by Shri Mohd Ashraf Abdul Sheikh and all the sales invoices issued by M/s. Ankur Trading, Ahmedabad are bogus and involve invalid ITC, which have been availed and utilized by various firms, without actual movement of goods. Further, the Ahmedabad South Commissionerate vide their said letter dated 30.01.2020 also forwarded the Panchnama dated 17.12.19 drawn at the registered premises of M/s. Ankur Trading and the recorded statement of Shri Mohd Ashraf Abdul Sheikh, who resides on the registered address of M/s. Ankur Trading under section 70 of CGST Act, 2017.

**2(ii).** On further investigation, it is revealed that the appellant had availed ITC on the strength of the fake invoices generated by M/s. Ankur Trading. The detail is as under:-

Invoice No. & Date	Value in Rs.	CGST + SGST	Total invoice value
AG095, 29.06.2018	63,86,160	11,49,510	75,35,669
AG097, 30.06.2018	68,24,900	12,28,482	80,53,382
Total		23,77,992	

The appellant had received inward supply of goods worth Rs.1,32,11,060/- in the month of June 2018 with the involvement of total tax of Rs. 23,77,992/- (CGST amounting Rs.11,88,996/- and SGST amounting Rs. 11,88,996/-) on the fake invoices generated by M/s. Ankur Trading. Further, an inquiry was



initiated against the appellant during the course of investigation. Shri Anil Kumar Somabhai Patel manager of appellant firm and Shri Vinodbhai Gokaldas Prajapati proprietor of appellant firm agreed to reverse/pay the said ineligible ITC availed on the basis of invoices issued by M/s Ankur Trading along with applicable interest and penalty as applicable within 15 days from the date of panchnama i.e. 24.02.2020. Shri Vinodbhai Gokaldas Prajapati proprietor of appellant firm has submitted letter dated 25.02.2020, wherein, the said appellant requested that out of ineligible ITC Rs. 23,77,992/- they paid Rs. 50,000/- vide DRC debit entry no. DI2402200537890 dated 25.02.2020, and also requested that they will pay the outstanding amount within one year. Further, the statement of Shri Vinodbhai Gokaldas Prajapati proprietor of appellant firm was recorded under Section 70 of the Central Goods and Services Tax Act, 2017 on 01.06.2020 before the Superintendent of Central Goods and Services Tax Hqrs. (Anti-Evasion) Gandhinagar Commissionerate. In the statement of Shri Vinodbhai Gokaldas Prajapati, recorded under Section 70 of the Central Goods and Services Tax Act, 2017, had stated interalia that he is the proprietor of Tarun Kumar industries; that the said firm is engaged in the manufacturing and trading of Copper Sulphate and for the same purpose the firm was registered under Central GST under registration no. 24ABJPP9767DIZ9; that the Copper scrap purchased from M/s Ankur Trading through Mr. Manoj shah (agent- 9726229292); that he has been shown letter F.No.IV/PI-1/250/Fake/Ankur/2019-20 dated 30.01.2020 from Additional Commissioner(Preventive), CGST & C.Ex. Ahmedabad South Commissionerate. Thereafter, Shri Vinodbhai Gokaldas Prajapati stated that it appears that M/s Ankur Trading is engaged in issuing of fake invoices, hence he doesn't want to enter into any legal litigation, So he voluntarily agreed to pay the outstanding dues along-with interest and penalty as applicable. Accordingly, the appellant has paid up the amount of tax vide DRC-03.

2(iii). Further due to short payment of interest the jurisdiction officer issued a show cause notice u/s. 74(1) of CGST Act 2017, for short payment of interest. The appellant further paid the short amount of interest of Rs. 2,42,890/- on 26.07.2023. The adjudicating authority has not consider the 15% penalty as per provision u/s 74(5) of the CGST Act, 2017 due to the appellant has not paid the full amount of interest, therefore passed an order to pay 100% penalty on tax u/s. 74(1) of the CGST Act, 2017, due to short payment of interest of Rs. 1,93,633/-. In view of the above the appellant is liable to pay penalty of Rs. 20,21,292/- (CGST Rs. 10,10,646/- and SGST Rs. 10,10,646/-) in terms of Section 74(1) of the CGST Act, 2017.



3. Accordingly, the appellant was issued Show Cause Notice. The impugned Show Cause Notice has been adjudicated by the adjudicating authority vide the impugned order dated 31.07.2023. The adjudicating authority has passed the impugned order on the following grounds:

- the taxpayer has himself admitted the fact that Input Tax Credit has been availed and utilized on the strength of fake invoices issued by M/s Ankur Trading Co. Therefore, there is no need to prove it again on the part of department;
- that the Taxpayer has suppressed the facts with an intention to avail inadmissible and irregular ITC credit of CGST and SGST amounting to Rs.23,77,992/- in a fraudulent manner without actual receipt of goods during the months of June 2018;
- the Taxpayer has deposited the amount of Rs.23,77,992/- vide various DRC-03. The same is required to be appropriated under Section 74(5) of the CGST Act, 2017;
- that the Taxpayer has deposited Rs.6,42,060/- vide DRC-03 dated 30.3.2020 and Rs. 2,42,890/- vide DRC-03- dated-267.2023. The same is required to be appropriated under the provision of section 50(3) of CGST Act/ SGST Act, 2017;
- that the Taxpayer has deposited the amount of Rs. 3,56,700/- towards penalty vide DRC-03 dated 30.3.2020. The same is required to be appropriated under the provisions of Section 122(1)(vii) read with Section 74(1) of the CGST Act, 2017;
- the Taxpayer has paid Rs.23,77,992/(as Tax), Rs.6,42,060/-(as interest) and Rs.3,56,700/- (as 15% penalty) on 30.3.2020 whereas the Taxpayer was required to pay interest of Rs. 8,35,693/-, therefore, the condition of payment of interest has not been fulfilled by them. Accordingly, I find that request for concluding the notice as provided under Section 74(5) is not legally correct and sustainable in the eyes of law.

4. Being aggrieved with the impugned order, the appellant preferred this appeal on 22.09.2023 on the following grounds:-

- The appellant has paid the tax with interest (Rs.193633/- short) and 15% penalty before issuing show cause notice and difference amount of interest of Rs.2,42,890/- before issuing the order.
- The appellant is regular tax payer and faced the problem due to bogus billing carried out by the agent or suppliers, the appellant has paid the tax to the suppliers and again to the GST department also.



- The appellant intention was not mala fide and he could not check the genuineness of the suppliers but it's a routine business activity and the transaction were carried out with not a bad intention.
- When the amount paid as per the ascertainment of the assessee falls short, the proper officer shall issue a SCN for the amount of short fall under Section 74(1) of the CGST Act, 2017. Therefore, the Proper office shall issue a notice under section 74(1) of the CGST Act, 2017 for the short fall amount only.
- The appellant has paid the tax interest and 15% penalty u/s 74(5) and short payment of interest is due to a simple calculation mistake and it's a human mistake and when the appellant come to know the calculation mistake he has paid the difference amount, therefore the appellant should not be penalized for 100% penalty u/s 74(1) of the CGST Act-2017.

In the aforesaid ground the appellant pray for Penalty of Rs.23,77,992/- (CGST and SGST) u/s 74(1) of CGST Act-2017 to be waived and it should be Rs.3,56,700/- u/s 74(5) of the CGST Act, 2017 as the appellant has already paid. The appellant pray to give the relief from huge penalty and it will disturb the business of the appellant. Appellant hereby request you to give us a chance to hear in person before taking any decision.



**PERSONAL HEARING:**

5. Personal hearing in the matter was held on 19.10.2023. Shri Narendra Singh Sankhla, Tax Practitioner, Authorized Representative appeared in person on behalf of the appellant in the present appeal. During P.H. he has submitted that no DRC-01A has been issued. Taxes alongwith interest and 15% penalty under Section 74(5) has been paid. Only some part of interest not paid due to calculation error. Department has not informed at any pint of time other than SCN. The difference in interest is also paid before issue of Order in Original. In view of above requested to allow appeal. Also submitted documents during P.H. showing payment details

**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 is liable to pay penalty of Rs. 20,21,292/- (CGST Rs. 10,10,646/- and SGST Rs. 10,10,646/-) in terms of Section 74(1) of the CGST Act, 2017?

**7(i).** In the instant case, it is observed that the appellant had availed ITC on the strength of the fake invoices generated by M/s. Ankur Trading. So they voluntarily agreed to pay the outstanding dues along-with interest and penalty as applicable. Accordingly, the appellant has paid up the amount of tax of Rs. 23,77,992/-, interest of Rs. 6,42,060/- and 15% penalty i.e Rs. 3,56,700/- (15 % of tax amount of Rs. 23,77,992/-) vide DRC-03 before the issue of SCN dated 31.03.2022.

**7(ii).** Further it is observed that the appellant has been issued DRC-01A on 25.03.2022 and also requested to conclude the proceedings initiated against them as they had deposited the amount of tax along with interest and penalty prior to issuance of show cause notice i.e. on 31.3.2022. In this regard I observe that as per provisions of sub-Section (5) and sub-Section (6) of Section 74 of the CGST Act, 2017 provides as under:

*"(5) The person chargeable with tax may, before service of notice under subsection (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment."*

*"The proper officer, on receipt of such information, shall not serve any notice under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder."*

**7(iii).** In the instant case, it is observed that the appellant has paid Rs.23,77,992/- (as Tax) by 27.10.2020, Rs.6,42,060/-(as interest) on 30.03.2020 and Rs.3,56,700/- (as 15% penalty) on 30.3.2020 whereas the appellant was required to pay total interest of Rs. 8,35,693/-, hence made short payment of interest of Rs. 1,93,633/- (Rs. 8,35,693/- minus Rs. 6,42,060/-). However it is observed that in the instant case the appellant had already made payment of tax, penalty and interest of Rs. 6,42,060/- before issue of SCN. The appellant has only made short payment of interest of Rs.1,93,633/- due to a simple calculation mistake and when they came to know the calculation mistake they had paid the difference amount before the issue of Order in Original.

**8(i).** In view of above it is observed that the appellant had paid the Tax vide DRC No. DI2402200537890, dated 25.02.2020, DRC No. DI240620034968, dated 04.06.2020, DRC No. DI2407200471963, dated 24.07.2020, DRC No. DI2408200219111, dated 18.08.2020, DRC No. DI2409200097048, dated 09.09.2020, DRC No. DI240200027879, dated 03.10.2020 and DRC No. DC2410200462859, dated 27.10.2020 penalty vide



DRC No. DI2403220310661, dated 30.03.2020 and interest (Rs.6,42,060/- out of Rs. 8,35,693/-) vide DRC No. DI2403220310661, dated 30.03.2020 before the issue of DRC-01A dated 25.03.2022 and Show Cause Notice dated 31.03.2022. This shows bonafide intention of the appellant and as submitted by appellant that they could not check the genuineness of the supplier but it's a routine business activity. The appellant has only made short payment of interest of Rs.1,93,633/- due to a calculation mistake and it came to notice of the appellant only after issue to Show Cause Notice and when they came to know the calculation mistake they had paid the difference amount of interest also vide DRC No. DC2407230481263 and DC2407230481263, dated 26.07.2023 before the issue of Order in Original dated 31.07.2023. In view of above the appellant is eligible for benefit of provisions of Section 74(5) of CGST Act, 2017.

9. In view of foregoing discussions, the impugned order passed by the adjudicating authority is set aside and accordingly, I allow the appeal of the 'Appellant'.

अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त शर्तों से किया जाता है।


The appeal filed by the appellant stands disposed of in above terms.

  
20/11/2023  
(Adesh Kumar Jain)

Joint Commissioner (Appeals)

Date: 20.11.2023

Attested

  
(Sandheer Kumar)  
Superintendent (Appeals)

By R.P.A.D.  
M/s. Tarun Kumar Industries,  
Legal Name: Vinod Kumar Gokaldas Prajapati,  
Plot No. 132, Gozaria GIDC, Dist: Mehsana,  
Gujarat-382825



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 Deputy/Asstt. Commissioner, CGST, Division- Mehsana, Gandhinagar Commissionerate.
5. The Superintendent (Systems) CGST Appeals, Ahmedabad.
6. Guard File.
7. P.A. File.



