



# आयुक्त (अपील) का कार्यालय,

Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावडी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

फोन 07926305065-

टैलेफैक्स 07926305136



DIN- 202311645W000001010C

रजिस्टर्ड ट्रक ए.डी. द्वारा

क फाइल संख्या File No : GAPPL/ADC/GSTP/2400/2023-APPEAL / ४५६९ - ६९

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-003-APP-JC- 51 /2023-24

दिनांक Date : 21.11.2023 जारी करने की तारीख Date of Issue : 24.11.2023

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. PLN-SUPDT-GST-03/2022-23 dated 18.04.2023 issued by The Superintendent, CGST, Range-I (Palanpur), Division Palanpur, Gandhinagar Commissionerate.

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

Appellant	Respondent
M/s Kasimkhan Liyakatkhan Pathan (Trade Name – Banas Enterprise), 11/3041/1, B/H J K Marble, Near Ladbinala, Deesa Highway, Tal. – Palanpur, Banaskantha, Gujarat - 385001.	The Superintendent, CGST, Range-I (Palanpur), Division Palanpur, Gandhinagar Commissionerate

(A)	इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दाखल 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 remaining amount of Tax in dispute, in addition to the amount paid under Section 107(5) 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)	उप्य अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों 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 instructions 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. Banas Enterprise, Legal Name: Kasimkhan Liyakatkhan Pathan, 11/3041/1, B/H. J.K.Marble, Near Ladbinala, Deesa Highway, Ta. Palanpur, Banaskantha, Gujarat-385001 (hereinafter referred to as "the appellant"), holding GST Number 24ANBPP4818P1ZL has filed appeal against Order-In-Original No. PLN-SUPDT-GST-03/2022-23, dated 18.04.2023 (hereinafter referred to as the "impugned order") passed by the Superintendent, CGST & C.Ex., Range-Palanpur, Division- Palanpur, Gandhinagar Commissionerate (hereinafter referred to as the "adjudicating authority").

**2(ii).** The facts leading to this case are that the appellant is engaged in the business of trading of all kinds of iron and steel scrap and other scrap. Intelligence received from CGST, Kutch Commissionerate, Gandhidham, indicated that investigation against M/s. M.M. Alloys, Gandhidham and others revealed that M/s. M.M. Alloys and other firms viz M/s. Bankey Bihari Industries and M/s. Shiva International were non-existent and were also not operational from their registered premises. The said taxpayer is registered as Proprietorship concern and Shri Kasimkhan Liyakatkhan Pathan as its proprietor.

Intelligence received from CGST, Kutch Commissionerate, Gandhidham, conveyed that investigation conducted by the officers of CGST Gandhidham in the case of M/s. M. M. Alloys, Gandhidham, and his other related firms revealed that M/s. M.M. Alloys and other related firms i.e. M/s. Bankey Bihari Industries and M/s. Shiva International denoted issuance of invoices and passing on Input Tax Credit without supply of goods to various units, since the units were non-existent and not operational from the registered address the Input Tax Credit passed were inadmissible, ineligible and fake. The GSTR-1 filed by M/s. Bankey Bihari Industries having GSTIN 24DEFP85942D1ZG and M/s. Shiva International having GSTIN 24AMAPD6149H1ZD denoted issuance of invoices and passing on irregular input.

The details are as under:-

Name of the supplier	Invoice No. & Date	Value	CGST	SGST	Total invoice value
M/s. Shiva International	SI/18-19/253 dated 11.05.2018	566284	50966	50966	668216
M/s. Bankey Bihari Industries	BBI/18-19/209 dated 29.05.2018	553059	49775	49775	652610

M/s. Bankey Bihari Industries	BBI/18-19/216 dated 30.05.2018	558096	50229	50229	658553
	Total	1677439	150970	150970	1979379

From the above details of fake invoices issued by the non-existent Supplier, it appeared that the taxpayer-noticee had availed and utilised ITC to the tune of Rs., 3,01,940/- which appeared to be inadmissible.

2(iii). Verification of information available in the GST Portal, it transpired that the said appellant had received invoice without supply of corresponding goods from M/s. Shiva International & M/s. Bankey Bihari Industries. The said appellant is stated to have discharged/reversed the amount of inadmissible/ineligible ITC availed by effecting necessary debit entries from their Electronic Cash Ledger. However on scrutiny of the Electronic Cash Ledger as well as the Electronic Credit Ledger it was found that the said appellant had reversed the ineligible ITC of the above did not say fake/non-existent firms nor had they debited the GST liability amount from their Cash/Credit ledger. This act of non-payment/non-reversal of the ineligible ITC got confirmed upon verification of certified copy of the DRC-03 produced by the said appellant. It may be stated that the said certified copy of DRC-03 was only a draft document (DRC-03). This indicated that the appellant had not discharged its GST liability alongwith applicable interest under Section 50(3) of the CGST Act, 2017, and penalty under Section 74(5) of the CGST Act 2017 read with similar corresponding provisions under the Gujarat GST Act, 2017.

3(i). 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 18.04.2023. The adjudicating authority has passed the impugned order, which is briefly summarized as below:

- That there was no such contract between the sellers (non-existent/fake invoice supplier firms) and the buyer (the appellant) either oral or written. The appellant has adopted modus operandi of availing ITC only on the basis of fake invoices without physical receipt of goods by loss of the government exchequer;
- that during the course of investigation, the appellant was requested to produce copies of invoices and other connected documents issued by the supplier. However, no such evidence was submitted. This goes to prove that the appellant tried to suppress the facts from the Department with an intent to evade payment of tax and ITC was availed on the basis of fake invoice with male-fide intention.

- that as the said appellant has not produced the copies of invoices issued by the non-existent/fake firms/ supplier despite persistent efforts made by the Department. Therefore, it is crucial to verify the signature, indicated on the invoices and other end as the supplier firms are non-existent/ fake firms it could be possible that the said appellant might have availed fake ITC by arranging only invoices in the name of M/s. Bankney Bihari Industries and M/s. Shiva International;
- that the appellant had availed and utilised ITC based on the basis of bogus/non-existent/non-functional documents. Therefore, it can be said that the ITC has been availed/utilized by the appellant in contravention of the provisions of Section 16 of the said Act, In this view of the matter, the irregular/ admissible ITC of Rs. Rs. 3,01,940/- (CGST Rs. 1,50,970/- and SGST Rs. 1,50,970/-) utilized by the appellant towards their outward liabilities required to be recovered from them in terms of Section 122 of the said Act and similar provisions of the Gujarat State GST Act, 2017 along with interest and penalty.
- that Section 155 of the said Act stipulates that where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person. In the present the taxpayer has failed to satisfy the provisions of Section 16 of the said Act to establish his eligibility to ITC. The said appellant has further failed to establish the 'supply' of goods, on which ITC was taken, as no documentary evidence has been produced establish contract, sale, invoice, payment of tax by the bogus seller. The appellant has further failed to prove the veracity of the signatures which is expected to be reflected in said invoices. The appellant has further failed to prove the deliverance of goods from the said supplier;

**3(ii).** Accordingly, adjudicating authority confirm the demand of Rs. 3,01,940/- (CGST Rs. 1,50,970/- and SGST Rs. 1,50,970/-) under Section 74(1) of the CGST Act, 2017 read with Section 74 of the Gujarat GST Act, 2017 and appropriated Rs. 1,01,932/- paid by the appellant to the account of the government and remaining amount of Rs. 2,00,008/- shall be paid alongwith interest under Section 50(3) readwith Section 74(1) of the CGST Act, 2017 to the tune of Rs. 3,01,940/- and penalty of Rs. 3,01,940/- under Section 74(1) of the CGST Act 2017 read with Section 122(1)(vii) of the CGST-Act, 2017.



4(i). Being aggrieved with the impugned order, the appellant preferred this appeal on 20.07.2023 on the following grounds:-

- that the Superintendent of CGST, AR-Palanpur, Palanpur Division Gandhinagar Commissionerate has erred in law while passing the order under Section 74 of the (CGST / SGST Act) for the year 2018-19 raising huge demand of Rs. 3,01,940/ (CGST / SGST Act) and consequential interest and penalty thereof. The order passed by the Lrd. Assessing Authority deserves to be quashed and set aside;

- The Lrd. Assessing Authority has grievously erred in law in arriving to the conclusion that genuine purchases made by the appellant from M/s. Shiva International (GSTIN - 24AMAPD6149HAZD) and M/s. Bankey Bihari Industries (GSTIN - 24DEFFPS5942D1ZG) are not genuine and appellant has availed ineligible ITC as the said firms are either non-existence firms or issued fake invoices. The entire allegation of the assessing authority are based on lurking doubts without brought any material on record. The assessing authority has passed the order u/s. 74 of the OST Act. The action or the assessing authority is unwarranted, unjustifiable and bad in law;

- The Lrd. Assessing Authority has erred in law in not considering various documents and evidences submitted by the appellant in support of their genuine transactions of sales and purchases. Applying provisions of section 74 contrary to the provisions of the Act and deserves to be quashed and set aside as there is no wrongful availment of ITC;

- The Lrd. Assessing Authority has erred in law while passing order u/s. 74 of the GST Act as the authority concerned has overlooked and violated provisions of section 6 of the GST Act as different authority again initiated proceedings on parallel basis on the same subject matter, therefore the action is highly unjustifiable, unwarranted and bad in law;

- The Lrd. Assessing Authority has grievously erred in law as the order was passed without providing proper opportunity of being heard i.e. in gross violation of principle of natural justice.

- The Lrd. Assessing Authority has grievously erred in law in considering and stating that appellant has availed ineligible ITC whereas all the purchases are supported by legal and valid documents and appellant has satisfied relevant provisions of the GST Act of claiming genuine and lawful ITC i.e. section 16 and 155.

- The Lrd. Assessing Authority has grievously erred in law in charging consequential interest and initiating penalty in absence of any mean rea, contumacious conduct and guilty mind. Hence, the action of the Lrd. Assessing



Authority deserves to be quashed and set aside and proceedings initiated for interest and penalty deserves to be dropped.

**Additional submissions:**

4(ii). In further written submission submitted on 05.10.2023, the appellant contended on the following points:-

(a) That during the personal hearing, the appellant has produced all the documents before the adjudicating authority related to their genuine transactions of purchases undertaken by them from such supplier. However, the assessing authority has not accepted the contention of the appellant and disallowed ITC of Rs. 3,01,940/- and passed the assessment order u/s. 74 of the GST.

(b) That the appellant has not availed any ineligible ITC nor has only obtained invoices from the suppliers without actual receipt of the goods. In the case of the appellant, all the conditions satisfied u/s. 16 and 155 of the GST Act has been satisfied and complied by the appellant. All the transactions of sales and purchase are supported by legal and valid documents and there is no dispute about the genuineness of the transactions of sales and purchases, the goods so purchased by the taxpayer has further supplied to various recipients of the taxpayer hence, sales and purchase transactions were genuinely shown and undertaken by the appellant in their books of account and GST return filed by the, In support of the genuine purchases made the appellant from such suppliers submitted documents i.e. copy of tax invoice, E-way bill, LR, weighbridge receipt, ledger account, bank statement, certificate from various suppliers certifying the supply made to the appellant, copy of RTO of vehicle in which goods were transported, copy of form 3CD, copy of balance sheet.

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

- (i) The State of Karnataka vs. Ecom Gill Coffee Pvt. Ltd. III GSTR-1 SC;
- (ii) Mahalaxmi Gearing Pressing and Oil Industries vs. State of Maharashtra (2012)51 VST 1 (Bom.);
- (iii) Onquest Merchandize India Pvt. Ltd vs. Government of NCT of Delhi 92018) 56 GSTR 177 (Del.)
- (iv) Gherulal Balchand vs. State of Haryana (2011) 45 VST 195 (P & H)
- (v) Alok Kundu vs. Joint Commissioner of Commercial Taxes (2020) 73 GSTR 385 WBTT
- (vi) D Y Beathlic Enterprise vs. STO (2021) 91 GSTR 300 (Madras)



**PERSONAL HEARING:**

5. Personal hearing in the matter was fixed on 18.09.2023, 26.09.2023, 05.10.2023 and 13.10.2023. However, no one appeared for the Personal Hearing on the Scheduled dates and also not received any communication from respondent in this regard. The letters informing dates of Personal Hearings were communicated through post at the time of filing of present appeal.

**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 appellant has been given the sufficient number of Personal Hearing, before deciding the matter by this appellate authority however, no one responded to the PH letters. Therefore, there is no other option to decide the matter except decide the same as ex-parte. The issues to be decided in the present appeal are whether the appellant had correctly availed ineligible ITC amounting to Rs. 3,01,940/- or otherwise?

7(i). It is observed from the case records that Intelligence received from CGST, Kutch Commissionerate, Gandhidham, conveyed that investigation conducted by the officers of CGST Gandhidham in the case of M/s. M. M. Aloys, Gandhidham, and his other related firms revealed that M/s. M.M. Aloys and other related firms i.e. M/s. Bankey Bihari Industries and M/s. Shiva International denoted issuance of invoices and passing on Input Tax Credit without supply of goods to various units, since the units were non-existent and not operational from the registered address the Input Tax Credit passed were inadmissible, ineligible and fake. Accordingly, the appellant was requested for payment of outstanding GST liability along with applicable interest and penalty. But the appellant failed to discharge the GST liability. Scrutiny of GSTR-3B of the appellant revealed that they had availed and utilized the ITC as tabulated above to the tune of Rs. 3,01,940/- which are inadmissible.

7(ii). It is observed that the appellant stated that they have discharged/reversed the amount of inadmissible/ ineligible ITC availed by effecting necessary debit entries from their Electronic Cash Ledger. However on scrutiny of the Electronic Cash Ledger as well as the Electronic Credit Ledger it was found that the said appellant had reversed the ineligible ITC of the above did not say fake/non-existent firms nor had they debited the GST liability amount from their Cash/Credit ledger. This act of non-payment/non-reversal of the ineligible ITC got confirmed upon verification of certified copy of the



DRC-03 produced by the said appellant and found that the said certified copy of DRC-03 was only a draft document (DRC-03). This indicated that the appellant had not discharged its GST liability alongwith applicable interest under Section 50(3) of the CGST Act. 2017, and penalty under Section 74(5) of the CGST Act 2017 read with similar corresponding provisions under the Gujarat GST Act. 2017.

**8(i).** In the instant case the main issue is 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 written submission the appellant has submitted the documents in support of the genuine purchases made by them from their suppliers. In this regard, whatever fact available on record, it is observed that the appellant has failed 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 it is observed that the tax on the said supply is also not actually paid to the Government, as the supplier has paid it through spurious ITC. Further 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. I refer to the relevant extract of Section 155 of the CGST Act, 2017:

**Section 155. Burden of proof.-**

*Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person.*

In the instant case the appellant has to prove his eligibility to avail ITC in the light of aforesaid conditions, enumerated in Section 16 of the CGST Act, 2017. However the appellant has failed to satisfy all the mandatory conditions to make him eligible for ITC on supply of goods mentioned in invoices.

8(iii). Further personal hearing in the matter was fixed by the Appellate Authority on 18.09.2023, 26.09.2023, 05.10.2023 and 13.10.2023. However, no one appeared for the Personal Hearing on the Scheduled dates and also not received any communication from respondent in this regard. This goes to prove that the appellant tried to suppress the facts from the Department with an intent to evade payment of tax and ITC was availed on the basis of fake invoice with male-fide intention.

9. Further in the instant case, the appellant has referred various judgements in his written submission and in his additional submission. It is observed all the referred judgements were on different issue and no one is identical to the instant case. Further 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 it is observed that the appellant had deliberately availed such inadmissible ITC with sole intention to defraud the Government Exchequer. As per Section 155 the




burden of proving such claim shall lie on the appellant, however after given several personal hearings, no one appeared on the scheduled dates and also not received any communication from appellant in this regard.

10. 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 upheld.

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.

  
21/11/2023  
(Adesh Kumar Jain)

Joint Commissioner (Appeals)

Date: 21.11.2023

Attested

  
(Sandheer Kumar)  
Superintendent (Appeals)

By R.P.A.D.  
M/s. Banas Enterprise,  
Legal Name: Kasimkhan Liyakatkhani Pathan,  
11/3041/1, B/H. J.K.Marble, Near Ladbinala,  
Deesa Highway, Ta. Palanpur, Banaskantha,  
Gujarat-385001.



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, Range-Palanpur, CGST, Division-Palanpur, Gandhinagar Commissionerate.
5. The Superintendent, Range -Palanpur, CGST, Division- Palanpur, Gandhinagar Commissionerate.
6. The Superintendent (Systems), CGST Appeals, Ahmedabad.
7. Guard File.
8. P.A. File.

