



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.

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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या File No : GAPPL/ADC/GSTP/2561/2023-APPEAL | 8142 - 84

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-003-APP-JC- 52 /2023-24

दिनांक Date :22.11.2023 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. 01/SUPDT/Range-I/Mehsana/2023-24 dated 28.06.2023 issued by The Superintendent, CGST, Range-I, Division Mehsana, Gandhinagar Commissionerate.

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

Appellant	Respondent
M/s Aarav Tradecom LLP, Phase-2, Plot NO. -326, Dediyaan GIDC, GIDC Road, Mehsana, Gujarat - 384002.	The Superintendent, CGST, Range-I, Division Mehsana, Gandhinagar Commissionerate

(A)	इस आदेश(अपील) से ज्वरित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी/ प्राधिकरण के समक्ष अपील दायर कर सकता है। Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.
(i)	National Bench or Regional Bench of Appellate Tribunal framed under GST Act/CGST Act in the cases where one of the issues involved relates to place of supply as per Section 109(5) of CGST Act, 2017.
(ii)	State Bench or Area Bench of Appellate Tribunal framed under GST Act/CGST Act other than as mentioned in para- (A)(i) above in terms of Section 109(7) of CGST Act, 2017
(iii)	Appeal to the Appellate Tribunal shall be filed as prescribed under Rule 110 of CGST Rules, 2017 and shall be accompanied with a fee of Rs. One Thousand for every Rs. One Lakh of Tax or Input Tax Credit involved or the difference in Tax or Input Tax Credit Involved or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of Rs. Twenty-Five Thousand.
(B)	Appeal under Section 112(1) of CGST Act, 2017 to Appellate Tribunal shall be filed along with relevant documents either electronically or as may be notified by the Registrar, Appellate Tribunal in FORM GST APL-05, on common portal as prescribed under Rule 110 of CGST Rules, 2017, and shall be accompanied by a copy of the order appealed against within seven days of filing FORM GST APL-05 online.
(i)	Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017 after paying - (i) Full amount of Tax, Interest, Fine, Fee and Penalty arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to twenty five per cent of the remaining amount of Tax in dispute, in addition to the amount paid under Section 107(b) 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 08.12.2019 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 अपीलार्थी 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। 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. Aarav Tradecom LLP, Phase-2, Plot No. 326, Dediyaan GIDC, GIDC Road, Mejsama, Gujarat-384002 (hereinafter referred to as "the appellant"), holding GST Number 24AAVFA3927H1Z9 has filed appeal against Order-In-Original No. 01/Supdt/Range-I, Mehsana/2022-23, dated 28.06.2023 (hereinafter referred to as the "impugned order") passed by the Superintendent(Anti Evasion), CGST & C.Ex., Range-I, 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 business of trading of Aluminium scrap, brass scrap copper wire scrap, Drill pipes, machinery scrap, MS pipe, MS pipe-rod, MS Scrap, MS Scrap lot, Plastic scrap, SS Scrap, plastic barrel, etc. The registered person is registered in GST having GST registration no. 24AAVFA3927H1Z9. An investigation had been conducted by the officers of CGST Jaipur and it was found that M/s. Salasar Enterprise having GSTIN 08AZOPS1146E2Z6 was a non-existent firm which is not operational from the registered premise. The registered address is a residential premise of Shri Ashok Kumar Siotia, Proprietor of M/s. Salasar Enterprise.

2(ii). Further investigating in the matter of M/s. Salasar Enterprise unearthed passing of ineligible Input Tax Credit (ITC) to various units. Among such units, one of the recipients of all the outwards supplier of M/s. Salasar Enterprise is M/s. Aarav Tradecom LLP having GST registered no. 24AAVFA3927H1Z9. It is found that M/s. Aarav Tradecom LLP had received seven invoices from M/s. Salasar Enterprise where upon they have availed ITC totally amounting to Rs. 7,59,230/-

3. Accordingly, the appellant was issued Show Cause Notice No. 27/2021-22 dated 31.03.2022. The Show Cause Notice dated 31.03.2022 has been adjudicated by the adjudicating authority vide the impugned order dated 28.06.2023. The adjudicating authority has passed the impugned order and confirms the demand on the following grounds:



- that the Taxpayer had availed ITC on the basis of invoice received from a non-existing supplier M/s Salasar Enterprise on account of ITC auto populated in GSTR-2A. The supplier M/s. Salasar Enterprise (GSTIN-08AZOPS1146E2Z6) during investigation was found non-existing at its registered Principal Place of Business. During investigation, it is also found that the supplier exists on paper only and has been constituted for the sake of passing on ITC only;
- the second condition which is "receiving of goods" is not part of this transaction. The goods were never supplied by Mis Salasar Enterprise, as the goods were supplied by Shri Inder kumar Khandelwal (broker). Shri Inder kumar Khandelwal (Broker) never issued any invoice at the time of removal of goods and never filed any return for supplying these goods. Shri Inder kumar Khandelwal (Broker) arranged invoices from a non-existing/fake firm M/s Salasar Enterprise and accompanied it with uninvoiced goods;
- the taxpayer in their submission as well as during Personal Hearing stated that they had purchased the goods from a broker namely Shri Inder Kumar Khandelwal, not from the Supplier directly, who supplied goods along with the invoices of M/s. Salasar Enterprise. I further find that the taxpayer is not aware of the actual supplier of the goods as they were purchasing the goods from Shri Inder kumar Khandelwal (Broker). The GSTR-2A was auto-populated because of the invoice generated and GSTR-1 filed by the fake entity M/s. Salasar Enterprise;
- that the recipient has created a new transaction by combining the goods from one source and the invoice from another source. This action is not legal, and it is clear that the invoice was created only to claim fraudulent ITC. the taxpayer did not provide any evidence that fulfill all four conditions in section 16(2) of CGST Act, 2017;
- that taxpayer has suppressed the facts and contravened the aforesaid provisions of the CGST Act, 2017 and Rules made there-under with an intent to evade payment of goods and Service tax. Therefore, the amount of Rs. 7,59,230/- is required to be recovered under the provisions of Section 74(1) of CGST Act, 2017/IGST Act, 2017 along with applicable rate of interest under the provisions under section 50(3) of the CGST Act,2017 and penalty equivalent to the above payable amount. Accordingly, the said taxpayer is liable for penal action as per the provisions of section 122(1)(vi) of the CGST Act, 2017.



4. Being aggrieved with the impugned order, the appellant preferred this appeal on 28.08.2023 on the following grounds:-

- That officer have found that Shri Ashok Kumar Siotia was operating the firm M/s Salasar Enterprise which was non-existent and fictitiously floated and issuing invoice without supply of goods which is invalid and totally false. Mrs. Menka Ashok kumar Siotia has only mentioned that she is unaware of such business named M/s Salasar Enterprise. Such interpretations raised by the Department are illegal and it is liable to be set aside;
- Their contentions were based on assumptions and presumptions, as there is no evidence of non-receipt of goods hence untenable in eyes of law. And thus their contention is patently invalid, based on Panchnama (RUD-01) and liable to be discharged as being untenable in law based on below mentioned undisputed facts. This input tax credit was recovered on the alleged ground that supplier was non-existent and 'subject goods' of the said invoices were never received by us. The alleged inferences, about 'non-receipt of goods/without movement of goods', drawn in Statement/Panchnama (RUD-01) is improper, unjustified, and mere conjectures in as much as the so-called evidences are inconclusive in nature and consequently, the alleged demand raised towards the inadmissible input tax credit cannot be maintained in law;
- the Appellant had purchased and sold the goods on payment of appropriate tax by duly accounting the same in their prescribed records the Appellant had made the payment against the said supply made by M/s. Salasar Enterprise by account payee cheques /online payment and such purchases have also been recorded in their books of accounts;
- The Appellant purchased goods from the M/s. Salasar Enterprise having GSTIN No. 08AZOPS1146E2Z6 under proper invoices as defined under section 31 of Central Goods and Services Tax Act, 2017, there being no dispute about the credentials of the tax invoice. Further there was no doubt about the genuineness of the invoices as the said invoices are duly issued by the supplying dealer M/s. Salasar Enterprise and supplied along with the goods which was duly received at their premises;
- The eligibility criteria for availing the input tax credit (ITC) and the conditions are fulfilled as per section 16 of the CGST Act 2017;
- The suppliers including M/s Salasar Enterprise having GSTIN No. 08AZOPS1146E2Z6 have duly furnished their returns i.e. GSTR-1 and



GSTR-3B for the relevant period. The referred inputs tax invoices are duly reflected in our GSTR-2A which are auto populated from GST Portal;

- The recipient shall make the payment for the supply of taxable goods or services or both within a period of 180 days. Payment for both value for goods or services and tax thereon shall be paid within a period of 180 days from the date of issue of invoice by the supplier;
- that all conditions including the main conditions as prescribed in Para 16 of subject OIO for taking input tax credit as prescribed under Section 16 read with Rule 36 & 37 has been complied by the Appellant and thus demand of input tax credit raised by the department already paid is invalid and illegal and thus liable to be refunded/quashed;
- The Appellant submit that he is under no legal obligation to make an inquiry and ensure that M/s Salasar Enterprise having GSTIN no. 08AZOPS1146E2Z6 have been issuing the invoices only on the basis of valid input tax invoices and in respect of the goods actually received by them under such invoices. Such an obligation is not cast upon the Appellant under the law nor is it possible to discharge such obligation when the Appellant has already received the goods;

The subject OIO has alleged in Para 19 that no invoice was issued by the Supplier. But it is crystal clear that the Supplier was Mis Salasar Enterprise who has already sent goods with proper Invoice and supporting documents. Mr. Inder Kumar Khandelwal was a broker so there arises no need on his part to issue the invoice;

- it is mentioned in RUD-03(Statement of Shri Bhavesh Ganeshbhai Shah) that the Appellant had made deals through the same broker with parties viz. Jaipur Vidyut Vitran Nigam Limited and M/s Indian Oil Corporation Limited. Hence, it can be reiterated that the Appellant's purchase is valid one and there was no issuance of fake invoices because transactions with abovementioned parties through the same broker cannot be invalid and fake.
- that there has been genuine sale purchase transactions between the Appellant and M/s Salasar Enterprise, and fraud if any, has been committed at part of the M/s Salasar Enterprise for which the Appellant cannot be held responsible. Hence, the liability of Tax along with Interest and Penalty is not acceptable and thus subject OIO should be quashed and set aside;



Personal Hearing:

5. The appellant was granted personal hearing on 27.09.2023, 18.10.2023, 30.10.2023 and 09.11.2023. Mr. Tapan Shah, C.A., appeared for hearing in the matter as authorized representative on behalf of the appellant and reiterated the written submission and requested to allow 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 issues to be decided in the present appeal are whether the appellant had correctly availed ineligible ITC during the period 2017-18 (from July 2017) of 07 invoices amounting to Rs. 7,59,230/- or otherwise?

7. It is observed from the case records that letter dated 03.06.2019 is received from the Principal Commissioner, CGST Commissionerate, Jaipur, whereby an investigation had been conducted by the officers of CGST Jaipur it is found that M/s. Salasar Enterprise passing of ineligible Input Tax Credit (ITC) to various units. Among such units, one of the recipients of all the outwards supplier of M/s. Salasar Enterprise is M/s. Aarav Tradecom LLP having GST registered no. 24AAVFA3927H1Z9. It is found that M/s. Aarav Tradecom LLP had received seven invoices from M/s. Salasar Enterprise where upon they have availed ITC totally amounting to Rs. 7,59,230/-.

8. As per the documents available on file it is observed that the appellant had purchased the goods from a broker namely Shri Inderkumar Khandelwal and not from the supplier directly i.e. M/s. Salasar Enterprise. The appellant is not aware of the actual supplier of the goods as they were purchasing the goods from Shri Inderkumar Khandelwal (Broker). The GSTR-2A was auto-populated because of the invoice generated and GSTR-1 filed by the fake entity M/s. Salasar Enterprise. After investigation conducted by the officers of CGST Jaipur and it was found that M/s. Salasar Enterprise having GSTIN 08AZOPS1146E2Z6 was a non-existent firm which was not operational from the registered premise. The registered address is a residential premise of Shri Ashok Kumar Siotia, Proprietor of M/s. Salasar Enterprise and Shri Ashok Kumar Siotia was unaware of such business firm registered at his address. In view of the above it is observed that the said non-existent / fake invoice supplier firms were involved in only paper trading or the purpose of defrauding the government exchequer by way of passing of irregular and inadmissible



Input Tax Credit. Further, it is observed that said non-existent firms had supplied invoices without supply of goods to many firms including the registered persons firm thereby passing fake ITC and the registered person had availed the fake ITC on the strength of the invoices issued by said fake firms.

9(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;

(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:

9(ii). As per Sub-section 2 of Section 16 of the CGST Act, 2017, which is "receiving of goods" is not part of this transaction. In the instant case the goods is supplied by Mr. Inder kumar Khandelwal, was a broker who had never issued any invoice at the time of removal of goods and



never filed any return for supplying these goods. Mr. Inder kumar Khandelwal (broker) arranged invoices from a non-existing/fake firm M/s. Salasar Enterprise and accompanied it with in-invoiced goods. The condition for availing ITC is that the availer should be in possession of valid tax invoice. During the investigation, the appellant has produced the invoices of non existing entity M/s. Salasar Enterprise which have been arranged by Mr. Inder kumar Khandelwal (broker). In view of above it is observed that the appellant has violated the provisions of Section 16 of the CGST Act.

10. The appellant further contended that the suppliers including M/s Salasar Enterprise having GSTIN No. 08AZOPS1146E2Z6 have duly furnished their returns i.e. GSTR-1 and GSTR-3B for the relevant period. In this regard it is observed that the appellant is not aware of the actual supplier of the goods as they were purchasing the goods from Shri Inder kumar Khandelwal (Broker). The GSTR-2A was auto-populated because of the invoice generated and GSTR-1 filed by the fake entity M/s. Salasar Enterprise.

11. 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. 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.

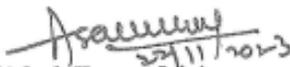
In the instant case the appellant has to prove his eligibility to avail ITC in the light of aforesaid conditions, enumerated in Section 16 of the CGST Act, 2017. However it is observed that the appellant has failed to satisfy all the mandatory conditions to make him eligible for ITC on supply of goods mentioned in invoices. The appellant not able to establish the genuineness of the invoices on which ITC was availed, as they were unable to prove the veracity of the signature reflected in the said invoices. Further I find that the tax on the said supply is also not actually paid to the Government, as the supplier has paid it through spurious ITC. In the instant case I find that the appellant had deliberately availed such inadmissible ITC with sole intention to defraud the Government Exchequer.



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

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

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


(Adesh Kumar Jain)
Joint Commissioner (Appeals)

Date: 22.11.2023

Attested


(Sandheer Kumar)
Superintendent (Appeals)

By R.P.A.D.

To,
M/s. Aarav Tradecom LLP,
Phase-2, Plot No. 326,
Dediyasan GIDC, GIDC Road,
Mejsama, Gujarat-384002.



Copy to:

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



