



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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क फाइल संख्या File No : GAPPL/ADC/GSTP/3581/2023 -APPEAL

1877-84

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-003-APP-JC- 63 /2023-24**

दिनांक Date : **24.01.2024** जारी करने की तारीख Date of Issue : 29.01.2024

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. 09/Lok/Supdt/HMT-I/2023-24 dated 21.07.2023 issued by The Superintendent, CGST Range-I, Division- Himmatnagar, Gandhinagar Commissionerate.

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

Appellant	Respondent
M/s Continental Engines Private Limited, 1513, Nandan Society, Motipura, Himmatnagar, Sabarkantha, Gujarat 383001	The Superintendent, CGST Range-I, Division- Himmatnagar, 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) Full amount of Tax, Interest, Fine, Fee and Penalty arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to twenty five per cent of the remaining amount of Tax in dispute, in addition to the amount paid under Section 107(6) of CGST Act, 2017, arising from the said order, in relation to which the appeal has been filed.
(ii)	The Central Goods & Service Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019 has provided that the appeal to tribunal can be made within three months from the date of communication of Order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.
(C)	उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbic.gov.in को देख सकते हैं। 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. Continental Engines Private Limited, 1513, Nandan Society, Motipura, Himmatnagar, Sabarkantha, Gujarat-383001, (hereinafter referred to as the "appellant") has filed the appeal on 25.10.2023 against Order-in-Original No. 09/LOK/SUPDT/HMT-1/2023-24, dated 21.07.2023 (hereinafter referred to as the "impugned order") passed by the Superintendent, Central GST & C.Ex., Range-1, Division-Himmatnagar, Gandhinagar Commissionerate, Gandhinagar (hereinafter referred to as the "adjudicating authority") against demand for reversal of ITC availed in GSTR 3B but not reflected in GSTR 2A alongwith interest and penalty.

2. Brief facts of the case in the present appeal is that the appellant registered under GSTIN 24AABCC9896N1ZW, are engaged in the activity of supply of goods of HSN 87042120 (motor vehicles for the transport of goods other, with compression-ignition internal combustion piston engine (diesel or semi-diesel): g.v.w not exceeding 5 tonnes three-wheeled motor vehicles). The taxpayer is also availing the facility of Input Tax Credit. The scrutiny of the returns of the appellant was conducted for the period from July 2017 to March 2018 as per SOP circulated by CBIC vide instruction No. 02/2022-GST dated 22.03.2022. Further, ASMT-10 dated 15.07.2022 was issued to the said taxpayer conveying the objection noticed during the scrutiny of returns. The details of the ITC liability, i.e. difference between as per GSTR-3B and GSTR 2A is as under:-

Description	IGST	CGST	SGST	Cess	Total
ITC as per GSTR-3B	22741200	278503	77105	0	23096808
ITC as per GSTR-2A	22258568	117905	77105	0	22453578
Excess ITC availed	482632	160598	0	0	643230

Hence, ITC of Rs.6,43,230/- in respect of difference of GSTR-3B v/s GSTR- 2A was required to paid along with interest/penalty as per CGST Rules, 2017 read with CGT Acts, 2017. Accordingly, the appellant was directed to pay/reverse the in-eligible ITC of Rs. 6,43,230/- alongwith applicable interest and penalty of Rs. 64,263/-.

3. The appellant was further issued show Cause Notice vide F.No.GEXCOM/SoR/3428/2022 dated 04.10.2022. Further, the adjudicating authority passed the impugned order and confirm the demand to recover the ITC of amounting to Rs. 6,43,230/- (CGST Rs. 1,60,598/- and IGST Rs. 4,82,632/-) under the provisions of Sections 73(1) of the CGST Act read with the SGST Act, 2017 and provisions of Section 20 of the IGST Act and appropriate the payment of Rs. 1,60,598/- along with interest vide DRC-03 bearing No. AD241222000326V dated 01.12.2022 towards the demand of Rs. 1,60,598/-(CGST) and also confirm the demand interest under Section 50(1) of the CGST Act read with the SGST Act, 2017 and provisions of Section 20 of the IGST Act and penalty amounting to Rs. 64,323/- (CGST Rs. 16,060/- and IGST Rs. 48,263/-) under section 122(2)(a) of the CGST Act read with similar provision of SGST Act and provisions of Section 20 of the IGST Act , for the following reasons :

- They referred the Provisions of Section 16(2), Section 38 and Section 155 of the CGST Act 2017;

- The taxpayer has not followed the above conditions. As the said conditions has to be mandatorily fulfilled by the appellant of ITC;
- the claim of the taxpayer, that payment of Tax has actually been made by their supplier to the government therefore provision of Section, 16(2)(C) of CGST Act 2017 has been duly complied with and the taxpayer is eligible to claim ITC amounting to Rs 4,82,632/- on the supplies made by the: suppliers, is not sustainable;
- that as per the provision of Section 155 of CGST Act 2017, the burden of proving eligibility for claim of ITC lies on the availer of such ITC. In the instance case the said taxpayer has failed to produce any document to adduce their claim that the difference in ITC of Rs. 4,82,632/- is actually due to the fact that their supplier has mistakenly punched GSTIN of their Company situated in Bihar instead of Gujarat;
- the said taxpayer has mentioned the instruction contained in Circular No 183/15/2022-GT dated 27.12.2022 regarding clarification to deal with difference in ITC availed in form GSTR 3B as compared to that detailed in form GSTR-2A/2B. In this regard, I find that the said circular provides remedy in case reason for difference in form GSTR-2A and GSTR-3B is succinctly established. However, in the instance case the said taxpayer has failed to provide any record/documents on record to establish that their supplier has filed form GSTR-1M as well as return in FORM GSTR-3B for the tax period July 2017 to March 18 but has declared the supply with wrong GSTIN of the recipient in form GSTR-1. Further, during the entire proceedings not even the invoice through which the supply was made was produced as mandated under Section 16(2)(a) of the CGST Act, 2017;
- the supplier had reported the GSTIN of their Bihar state instead of Gujarat state. Thus for FY 2017-18 this ITC is not reflecting in their GSTR-2A of Gujarat GSTIN;
- the said taxpayer has wrongly availed Input Tax Credit of Rs. 4,82,632/- which is not available to them as per detail of ITC auto populated in their GSTR 2A and also for which sufficient explanation is not available with them which they could produce before department. Hence, first proviso to section 73 of the CGST Act, 2017 read with section 122(2)(a) and 50(1) of CGST Act, 2017 have been reasonably invoked in the present case;
- the said taxpayer has not declared correct value of Input Tax Credit available to him and availed & utilized Input Tax Credit in excess for which no acceptable explanation is provided during Adjudication.

4. **Being aggrieved with the impugned order, the appellant preferred the present appeal on 25.10.2023 for the following reasons:**

- that the ITC which is availed in GSTR 3B and which is not reflected in GSTR 2A is Rs 9,897/-. Further, this ITC is also not reversible since it is within the limit of 10% provided under Rule 36(4) of the GST Rules. Accordingly, there is no ITC which is liable for reversal hence, the demand confirmed in the OIO should be set aside;
- invoices totalling GST of INR 5,91,853 were pertaining to the Appellant's Gujarat GSTIN. However, while filing GSTR 1, the supplier reported these invoices in the Appellant's Bihar's GSTIN. Accordingly, although these invoices pertain to the Appellant's Gujarat GSTIN, these invoices are reflected in the Appellant's Bihar GST.



2A. Hence, this amount is deducted from "ITC availed in GSTR 3B" for reconciling ITC in GSTR 3B from ITC in GSTR 2A.

- the Appellant submits that w.r.t. ITC of GST 5,91,853, the supplier GSTIN has duly discharged his GST liabilities hence, the condition provided under Section 16(2)(c) of the GST Act are satisfied;
- that the supplier has duly discharged GST w.r.t the above invoice and the only inadvertent omission on his part was reporting the invoice pertaining to Appellant's Gujarat location to Appellant's Bihar GSTIN in GSTR 1,. Consequently, as the supplier has duly discharged his GST liabilities, the ITC availed by the Appellant is in line with Section 16(2)(c) of the GST Act since the tax w.r.t. the inward supplies has been duly paid to the Government treasury;
- as the Appellant now has duly submitted all the documentary evidence to support that the invoice is not reflected in GSTR 2A owing to an inadvertent error of the supplier, the OIO confirming demand of ITC reversal owing to lack of documentary evidence should be set aside;
- The Appellant hereby submits that the wrong punching of GSTIN by the supplier in GSTR-1 is merely an inadvertent error on the part of the supplier and the benefit of ITC cannot be denied to the Appellant on account of such a mistake on the part of the supplier;
- the Appellant submits that it is a settled legal principle that ITC is not deniable merely because the supplier has committed some inadvertent omissions while filing his GSTR 1. Therefore, in this case as well, when the supplier has duly discharged his GST liabilities, ITC should not be denied merely because the supplier has reported invoices with an erroneous GSTIN;
- the Appellant places reliance on the decision pronounced by the Hon'ble Gujarat High Court in *M/s Screenotex Engineers Pvt Ltd Vs CGST Commissioner1* wherein the Hon'ble Gujarat High Court allowed the amendment in Form GSTR-1 for a mistake committed on account of inadvertent error;
- Reliance is also placed on *M/s Sun Dye Chem Vs the Assistant Commissioner 2* wherein the Hon'ble Madras High Court allowed an amendment of GSTR 1 to correct the particulars and enable the recipient to avail ITC even after due course of time;
- *Pentacle Plant Machineries Pvt. Ltd. vs Office of the GST Council* wherein the Hon'ble Madras High Court allowed a rectification of GSTR1 for a mistake committed owing to a human error viz. wrong punching of GSTIN while reporting supplies;
- The wrong punching of GSTIN is merely a procedural lapse and the benefit of ITC cannot be denied on this ground;
- , the Appellant places reliance on Circular No. 183/15/2022-GST dated 27 December 2022 wherein the CBIC has clarified that in case there is a difference between ITC availed in GSTR 3B and ITC available in GSTR 2A, owing to reporting of the invoice on an erroneous GSTIN, the compliance with Section 16(2)(c) of the GST Act could be ascertained by taking a CA certificate from the recipient. Accordingly, as in this case, the Appellant has already submitted a CA certificate in compliance with the above circular, the same should be accepted and the inadvertent error on the part of the supplier should be condoned;



- w.e.f. 01 January 2022, ITC could be availed only if the invoice is communicated to the recipient in GSTR 2A/2B. As this condition is introduced in the statute w.e.f. 01 January 2022, it becomes succinctly clear that before such date there is no requirement for an invoice to be reflected in GSTR 2A/2B for availment of ITC;
- Rule 36(4) of the CGST Rules which restricts availment of ITC up to the amount reflected in GSTR 2A is inserted by Notification No. 49/2019-CT w.e.f. effective from 9 October 2019 as is clarified in Circular 123/42/2019-GST dated 11 November 2019. Therefore, since Rule 36(4) would not apply to ITC availed during FY 2017-18, ITC would not be subjected to GSTR 2A compliance for FY 2017-18;
- , the Appellant should not be disallowed ITC merely because the invoices are not reflected in GSTR 2A. The same principle has been upheld in M/s Sun Dye Chem Vs Assistant Commissioner° wherein it has been held that in the absence of an enabling mechanism, the assessee should not be prejudiced from availing ITC that they are legitimately entitled to;
- Section 16(2) does not provide that ITC availed needs to be reflected in GSTR 2A. A press release dated 18 October 2018 issued by CBIC clarifies that the facility to view the invoices uploaded by suppliers in Form GSTR-2A is only for taxpayer facilitation and the apprehension that ITC can be availed only based on reconciliation between GSTR-2A and GSTR-3B is unfounded;
- reliance is also placed on Union of India Vs Bharti Airtel Ltd. & Ors.? wherein the Hon'ble Supreme Court has held that GSTR 2A is only a facilitating mechanism and a registered person is required to complete his self-assessment based on the accounts and records maintained by them;
- St. Joseph Tea Appellant Pvt. Ltd. Vs the State Tax Officer wherein it was held that ITC shall not be denied only because the invoice is not reflected in GSTR 2A;
- That the GST is still under the trial and error phase and the assesseees are facing genuine difficulties the same was also held by various courts by deciding in favour of the assessee. Therefore, the imposition of the penalty during the initial trial and error phase is not warranted and this is a valid reason for setting aside the penalties. In support, reliance is placed on a. Bhargava Motors Vs UOI 2019 (26) GSTL 164 (Del);
- The OIO has upheld interest on account of the demand for ITC reversal under Section 50 of the GST Act. In this regard, the Appellant submits that interest is not payable in as much as the ITC is itself eligible;

The appellant craves-leave to add, amend, alter, edit, delete, modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal.

PERSONAL HEARING :

5. Personal hearing in the present appeal was held on 09.01.2024. Shri Yash Shah C.A., Authorized Representative appeared in person on behalf of the appellant in the present appeal. During P.H. he reiterated the written submission and stated that certificate of C.A. as per Circular No. 183/15/2022-GST has already submitted and request to drop proceeding. They further stated that no more hearing is required in this regard.

DISCUSSION AND FINDINGS:

6. I have gone through the facts of the case, written submissions made by the 'appellant'. The adjudicating authority passed the impugned order and confirm the demand to recover the ITC of amounting to Rs. 6,43,230/- (CGST Rs. 1,60,598/- and IGST Rs. 4,82,632/-) under the provisions of Sections 73(1) of the CGST Act read with the SGST Act, 2017 and provisions of Section 20 of the IGST Act and appropriate the payment of Rs. 1,60,598/- vide DRC-03 bearing No. AD241222000326V dated 01.12.2022 towards the demand of Rs. 1,60,598/-(CGST). So the main issue to be decided in the instant case whether the appellant had wrongly availed Input Tax Credit in comparison to GSTR-3B with GSTR- 2A, amounting to Rs. 4,82,632/- alongwith interest and penalty.

7(i). In the instant case adjudicating authority is contending that the appellant has contravened the provisions of Section 16 and Section 38 of CGST Act 2017. In this regard, I hereby refer the relevant provisions as under:

Section 16. Eligibility and conditions for taking input tax credit.-

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,-

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

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

(b) he has received the goods or services or both.

2[**Explanation.**- For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services-

(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person;]

3[(ba) the details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted;]

(c) subject to the provisions of 4[section 41 5[***]], the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39;

Section 38. Communication of details of inward supplies and input tax credit.*

(1) The details of outward supplies furnished by the registered persons under sub-section (1) of section 37 and of such other supplies as may be prescribed, and an auto-generated statement containing the details of input tax credit shall be made available electronically to the recipients of such supplies in such form and manner, within such time, and subject to such conditions and restrictions as may be prescribed.

(2) The auto-generated statement under sub-section (1) shall consist of—

(a) details of inward supplies in respect of which credit of input tax may be available to the recipient; and

(b) details of supplies in respect of which such credit cannot be availed, whether wholly or partly, by the recipient, on account of the details of the said supplies being furnished under sub-section (1) of section 37,—

(i) by any registered person within such period of taking registration as may be prescribed; or


(ii) by any registered person, who has defaulted in payment of tax and where such default has continued for such period as may be prescribed; or

(iii) by any registered person, the output tax payable by whom in accordance with the statement of outward supplies furnished by him under the said sub-section during such period, as may be prescribed, exceeds the output tax paid by him during the said period by such limit as may be prescribed; or

(iv) by any registered person who, during such period as may be prescribed, has availed credit of input tax of an amount that exceeds the credit that can be availed by him in accordance with clause (a), by such limit as may be prescribed; or

(v) by any registered person, who has defaulted in discharging his tax liability in accordance with the provisions of sub-section (12) of section 49 subject to such conditions and restrictions as may be prescribed; or

(vi) by such other class of persons as may be prescribed.]


7(ii). The adjudicating authority in the impugned order has mentioned that the appellant in their reply has submitted that the difference in ITC available and availed is due to some of their supplier had inadvertently, committed mistake in their GSTR-1. The supplier has duly discharged GST and the only inadvertent omission on his part was reporting the invoice pertaining to Appellant's Gujarat location to Appellant's Bihar GSTIN in GSTR 1. As the Appellant now has duly submitted all the documentary evidence to support that the invoice is not reflected in GSTR-2A owing to an inadvertent error of the supplier due to wrong punching of GSTIN by the supplier in GSTR-1, the benefit of ITC cannot be denied to the Appellant on account of such a mistake on the part of the supplier. Further, the appellant submitted that as regard excess availment of ITC they have complied with all the conditions prescribed by the law for availment of ITC and have submitted all the documents.

8(i). Further the appellant while filing APL-01 and during the course of personal hearing, coated the benefit of Circular No. 183/15/2022-GST issued on 27/12/2022 by The Central Board of Indirect Taxes and Customs, Department of Revenue, Ministry of Finance, Government of India which deals with matter of difference of input tax credit availed in form GSTR-3B as compared to that detailed in Form GSTR-2A for financial year 2017-18 and 2018-19. In this regard, I hereby refer the relevant provisions as under:

Circular No. 183/15/2022-GST, dated 27.12.2022.

Subject: Clarification to deal with difference in Input Tax Credit (ITC) availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for FY 2017-18 and 2018-19—reg.

The main content of this circular are reproduced as under. " In order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the CGST Act, hereby clarifies as follows:

<i>Sr. No.</i>	<i>Scenario</i>	<i>Clarification</i>
<i>a.</i>	<i>Where the supplier has failed to file FORM GSTR-1 for a tax period but has filed the return in FORM GSTR-3B for said tax period, due to which the supplies made in the said tax period do not get reflected in FORM GSTR-2A of the recipients</i>	<i>In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 below.</i>
<i>b.</i>	<i>Where the supplier has filed FORM GSTR-1 as well as return in FORM GSTR-3B for a tax period, but has failed to report a particular supply in FORM GSTR-1, due to which the said supply does not get reflected in FORM GSTR-2A of the recipient.</i>	<i>In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 below</i>
<i>c.</i>	<i>Where supplies were made to a registered person and invoice is issued as per Rule 46 of CGST Rules containing GSTIN of the recipient, but supplier has wrongly reported the said supply as B2C supply, instead of B2B supply, in his FORM GSTR-1, due to which the said supply does not get reflected in FORM GSTR-2A of the said registered person.</i>	<i>In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 below</i>
<i>d.</i>	<i>Where the supplier has filed FORM GSTR-1 as well as return in FORM GSTR-3B for a tax period, but he has declared the supply with wrong GSTIN of the recipient in FORM GSTR-1</i>	<i>In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 below. In addition, the proper officer of the actual recipient shall intimate the concerned jurisdictional tax authority of the registered person, whose GSTIN has been mentioned wrongly, that ITC on those transactions is required to be disallowed, if claimed by such recipients in their FORM GSTR-3B. However, allowance of ITC to the actual recipient shall not depend on the completion of the action by the tax authority of such registered person, whose GSTIN has been mentioned wrongly, and such action will be pursued as an independent action.</i>



4. The proper officer shall first seek the details from the registered person regarding all the invoices on which ITC has been availed by the registered person in his FORM GSTR 3B but which are not reflecting in his FORM GSTR 2A. He shall then ascertain fulfillment of the following conditions of Section 16 of CGST Act in respect of the input tax credit availed on such invoices by the said registered person:

- i) that he is in possession of a tax invoice or debit note issued by the supplier or such other tax paying documents;*
- ii) that he has received the goods or services or both;*
- iii) that he has made payment for the amount towards the value of supply, along with tax payable thereon, to the supplier*

Besides, the proper officer shall also check whether any reversal of input tax credit is required to be made in accordance with section 17 or section 18 of CGST Act and also whether the said input tax credit has been availed within the time period specified under sub-section (4) of section 16 of CGST Act.

4.1 In order to verify the condition of clause (c) of sub-section (2) of Section 16 of CGST Act that tax on the said supply has been paid by the supplier, the following action may be taken by the proper officer:

4.1.1 In case, where difference between the ITC claimed in FORM GSTR-3B and that available in FORM GSTR 2A of the registered person in respect of a supplier for the said financial year exceeds Rs 5 lakh, the proper officer shall ask the registered person to produce a certificate for the concerned supplier from the Chartered Accountant (CA) or the Cost Accountant (CMA), certifying that supplies in respect of the said invoices of supplier have actually been made by the supplier to the said registered person and the tax on such supplies has been paid by the said supplier in his return in FORM GSTR 3B. Certificate issued by CA or CMA shall contain UDIN. UDIN of the certificate issued by CAs can be verified from ICAI website <https://udin.icai.org/search-udin> and that issued by CMAs can be verified from ICMA website <https://eicmai.in/udin/VerifyUDIN.aspx>.

4.1.2 In cases, where difference between the ITC claimed in FORM GSTR-3B and that available in FORM GSTR 2A of the registered person in respect of a supplier for the said financial year is upto Rs 1 lakh, the proper officer shall ask the claimant to produce a certificate from the concerned supplier to the effect that said supplies have actually been made by him to the said registered person and the tax on said supplies has been paid by the said supplier in his return in FORM GSTR 3B.

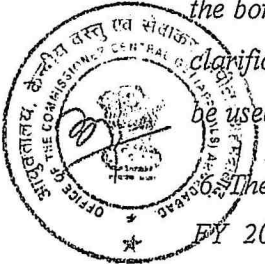
4.2 However, it may be noted that for the period FY 2017-18, as per proviso to section 16(4) of CGST Act, the aforesaid relaxations shall not be applicable to the claim of ITC made in the FORM GSTR-3B return filed after the due date of furnishing return for the month of September, 2018 till the due date of furnishing return for March, 2019, if supplier had not furnished details of the said supply in his FORM GSTR-1 till the due date of furnishing FORM GSTR 1 for the month of March, 2019.

5. It may also be noted that the clarifications given hereunder are case specific and are applicable to the bonafide errors committed in reporting during FY 2017-18 and 2018-19. Further, these guidelines are clarificatory in nature and may be applied as per the actual facts and circumstances of each case and shall not be used in the interpretation of the provisions of law.

6. These instructions will apply only to the ongoing proceedings in scrutiny/audit/investigation, etc. for FY 2017-18 and 2018-19 and not to the completed proceedings. However, these instructions will apply to those cases for FY 2017-18 and 2018-19 where any adjudication or appeal proceedings are still pending.

8(ii). In the instant case this case falls under main content of this circular N 183/15/2022-GST, dated 27.12.2022 (Sr. No. D) and clause no. 4.1.1. As per Sr. No. D of the said circular dated 27.12.2022, Where the supplier has filed FORM GSTR-1 as well as return in FORM GSTR-3B for a tax period, but he has declared the supply with wrong GSTIN of the recipient in FORM GSTR-1. In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 as mentioned above.

8(iii). While going through the facts of the case and written submissions made by the appellant it is observed that the difference in ITC available and availed is due to the reason that some of their supplier had inadvertently, committed mistake in their GSTR-1 by reporting the invoice pertaining to Appellant's Gujarat location to Appellant's Bihar GSTIN in GSTR 1 due to wrong punching of GSTIN by the supplier in GSTR-1. Further, t



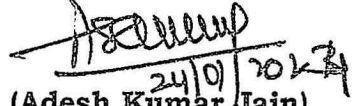
appellant submitted that as regard excess availment of ITC they have complied with all the conditions prescribed by the law for availment of ITC and have already submitted copies of invoice issued for supply of goods to Appellant's Gujarat's GSTIN; Copy of GSTR 1 of the supplier showing the above invoices being reported in Appellant's Bihar GSTIN; Copy of GSTR 2A of the Appellant's Bihar GSTIN showing the invoice; a comparison summary of supplier's GSTR 1 vs GSTR3B showing payment of full GST liability and CA's certificate certifying payment of GST on the invoice. In the instant case, a certificate from Chartered Accountant certifying payment of GST on the invoice to the effect that supplies have actually been made by them to the appellant and the tax on said supplies has been paid by the said supplier in his return in FORM GSTR 3B, is sufficient in the said case.

9. In view of the above, it is observed that the appellant have submitted the proper documents during filing of APL 01 form in this office. Hence, the impugned order disallowing the demand of Input Tax Credit (ITC) amounting to Rs. 4,82,632/- alongwith interest and penalty of Rs. 64,323/-, by the adjudicating authority under Section 73(1) needs to be set-aside, in terms of Circular No.183/15/2022-GST dated 27.12.2022.

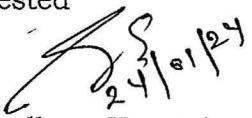
10. In view of above discussions, I allow the appeal of the "Appellant" to the above extent, with a direction to submit all the relevant documents/submission before the adjudicating authority for verification of the facts, who shall verify the facts as directed above and may also take up the matter with concerned jurisdictional officer as provided under point (c) of Circular No.183/15/2022-GST dated 27.12.2022.

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

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


(Adesh Kumar Jain)
Joint Commissioner (Appeals)
Date: 24.01.2024

Attested


(Sandheer Kumar)
Superintendent (Appeals)



By R.P.A.D.

To
M/s. Continental Engines Private Limited,
1513, Nandan Society, Motipura,
Himmatnagar, Sabarkantha,
Gujarat-383001.

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C. Excise, Appeals, Ahmedabad.
3. The Commissioner, Central GST & C.Ex, Gandhinagar Commissionerate.
4. The Dy. / Assistant Commissioner(RRA), CGST & C.Ex, Gandhinagar Commissionerate
5. The Dy. / Assistant Commissioner, CGST & C.Ex, Division-Himmatnagar, Gandhinagar.
6. The Superintendent, CGST & C.Ex, Range-1, Division-Himmatnagar, Gandhinagar.
7. The Superintendent (Systems), CGST Appeals, Ahmedabad, for publication of the OIA on website.

8. Guard File

9. P.A. File.

