



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

☎ 07926305065-

टेलिफैक्स 07926305136



DIN- 20240364SW0000860788

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या File No : GAPPL/ADC/GSTP/1115/2024 -APPEAL / 3102 - 48

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-003-APP-JC- 78 /2023-24

दिनांक Date : 15.03.2024 जारी करने की तारीख Date of Issue : 18.03.2024

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. Division/04/AC/DEM/MEH/GST/PKS/2023-24 dated 30.09.2023 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 PKS Technobuild Private Limited, A-22, Natraj Bankers Society, Kheralu Road, Visnagar, Mehsana, Gujarat, 384315	The Assistant Commissioner, CGST Division- Mehsana, Gandhinagar Commissionerate

(A)	इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है। Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.
(i)	National Bench or Regional Bench of Appellate Tribunal framed under GST Act/CGST Act in the cases where one of the issues involved relates to place of supply as per Section 109(5) of CGST Act, 2017.
(ii)	State Bench or Area Bench of Appellate Tribunal framed under GST Act/CGST Act other than as mentioned in para- (A)(i) above in terms of Section 109(7) of CGST Act, 2017
(iii)	Appeal to the Appellate Tribunal shall be filed as prescribed under Rule 110 of CGST Rules, 2017 and shall be accompanied with a fee of Rs. One Thousand for every Rs. One Lakh of Tax or Input Tax Credit involved or the difference in Tax or Input Tax Credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of Rs. Twenty-Five Thousand.
(B)	Appeal under Section 112(1) of CGST Act, 2017 to Appellate Tribunal shall be filed along with relevant documents either electronically or as may be notified by the Registrar, Appellate Tribunal in FORM GST APL-05, on common portal as prescribed under Rule 110 of CGST Rules, 2017, and shall be accompanied by a copy of the order appealed against within seven days of filing FORM GST APL-05 online.
(i)	Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017 after paying - (i) <u>Full amount of Tax, Interest, Fine, Fee and Penalty</u> arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to <u>twenty five per cent</u> of the remaining amount of Tax in dispute, in addition to the amount paid under Section 107(6) of CGST Act, 2017, arising from the said order, in relation to which the appeal has been filed.
(ii)	The Central Goods & Service Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019 has provided that the appeal to tribunal can be made within three months from the date of communication of Order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.
(C)	उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट 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 .

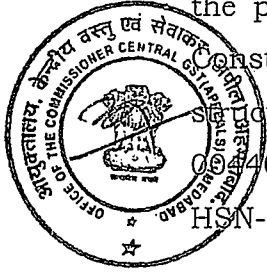


ORDER-IN-APPEAL

BRIEF FACTS OF THE CASE :

M/s. PKS Technobuild Private Limited, A-22, Natraj Bankers Society, Kheralu Road, Visnagar, Mehsana, Gujarat-384315 (hereinafter referred to as "the appellant"), holding GST Number 24AAJCP0789P1ZP has filed appeal against Order-In-Original No. 04/AC/DEM/MEH/GST/PKS, dated 30.09.2023 (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").

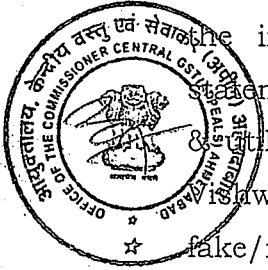
2(i). Whereas, the registration details of the appellant denotes the firm's involvement in the following: (i) Petroleum Oils and Oils obtained from Bituminous Minerals, Other than Crude; Preparations not elsewhere Specified or Included, Containing by Weight 70% or More of Petroleum Oils or of Oils obtained from Bituminous Minerals, These Oils being the basic constituents of the preparations; Waste Oils (ii) Manpower recruitment- HSN-00440060 (iii) Construction services in respect of commercial or industrial buildings and civil structures- HSN- 00440290 (iv) Site preparation and clearance- HSN- 00440306 (v) Mining services- HSN- 00440402 (vi) Works contract services- HSN- 00440410.



2(ii). From the intelligence gathered and search conducted with respect to M/s. Mahavir Trading and Sales GSTIN: 24DBBPR3590B1ZV (Legal Name Jashiben Ranchhodsinh. Rathod) and M/s. Vishwakarma Building Materials GSTIN: 24BSZPD8155R1ZO (Legal Name Rajnikant B Dave) by the officers of CGST Gandhinagar, it was revealed that the above firms were non-existent firm and were non operational from registered premises. In view of the above, it appears that the assesses mentioned above, are fake and working only on paper without supply of any corresponding goods. Further, analysis of the GSTR-1 filed by M/s. Mahavir Trading and Sales and M/s. Vishwakarma Building Materials, denoted issuance of invoices and passing on irregular Input Tax Credit without supply of goods to various firms. Amongst the recipients of theses fake/bogus firms, one of the recipients viz. M/s. PKS Technobuild Pvt Ltd (Appellant) (GSTIN: 24AAJCP0789P1ZP), A-22, Natraj Bankers Society, Kheralu Road Vishnagar, Gujarat-384315, had received invoices worth Rs. 3,05,88,336/- during the period from October-2018 to February-2019 with the tax (CGST+SGST) involved amounting to Rs. 65,58,382/-.

2(iii). During the search conducted at the premises of the said appellant i.e. M/s. PKS Technobuild Pvt. Ltd, it was found that the bogus/fake firm M/s Mahavir Trading and Sales; GSTIN: 24DBBPR3590B1ZV and M/s. Vishwakarma Building Materials; GSTIN: 24BSZPD8155R1ZO have issued invoices to M/s. PKS Technobuild Pvt. Ltd. whose total tax amount was Rs. 62,35,246/- + Rs. 3,23,136/- = Rs. 65,58,382/- and ITC on such fake invoices were availed by the appellant. Whereas, Shri Krunal Mahendrabhai Patel, Director of M/s. PKS Technobuild Pvt. Ltd. appeared on 10.08.2019 before the Superintendent of CGST & C.Ex. (Anti-evasion), Gandhinagar and stated that he is one of the Directors of the company and their company is engaged in Works Contract Service. They have made purchase related to building materials from the two firms 1) M/s. Mahavir Trading and 2) M/s. Vishwakarma Building Materials, during October-2018 to February-2019 through agent named Shri Amrit Lal and made payments to the account number provided by Shri Amrit Lal. On perusal of Panchnama dated 17.07.2019 drawn at Principal Place of Business of M/s. Mahavir Trading and Sales at E-502, Shri Sharan Residency, Nr. Aaradhya Home, Zundal Village, Chandkheda, Ahmedabad, he said that the invoices might be fake. Further, he stated that he agreed to voluntarily pay the GST liability availed on the invoices of the above said firms along with interest and penalty.

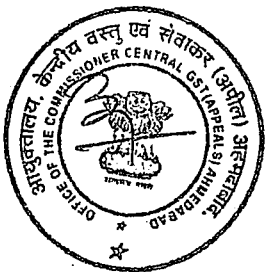
2(iv). The appellant has availed the Input Tax Credit on the strength of the invoices issued by the said bogus/fake firms. During recording of the assessment dated 10.08.2019 the appellant has accepted that they have availed & utilized ITC from the above said firms i.e. M/s. Mahavir Trading and M/s. Vishwakarma Building Materials. However these said firms have been declared fake/non-existent. Further it is to mention that these firms have passed on illegal ITC on the strength of the invoices purportedly issued to their buyers including the appellant firm without actual supply of the goods. On perusal of the GST returns GSTR 2A, GSR-3B and ITC ledger it was appeared that the appellant had availed and utilized ineligible ITC amounting to Rs.65,58,382/- (CGST Rs.32,79,191/- and SGST Rs. 32,79,191/-) through fake invoices issued during the period October 2018 to February 2019 and was liable to be disallowed and recovered from them under the proviso to Sub Section 1 of Section 74 of the CGST Act, 2017 read with respective provisions of Gujarat State GST Act, 2017 and Section 20 of IGST Act, 2017 alongwith interest amounting to Rs. 5,66,958/- under the provisions of Section 50 of the CGST, Act 2017 and penalty of Rs. 65,58,382/- under the provisions of Section 74 of the CGST, Act 2017 read with Section 122(1)(vii) of the CGST Act, 2017. On being pointed out the appellant had voluntary paid the tax vide DRC-03 dated



10.08.2019 and 13.08.2019 and voluntary paid interest vide DRC-03 dated 16.09.2020. However, the appellant has not agreed to pay penalty of Rs. 65,58,382/- and go for appeal.

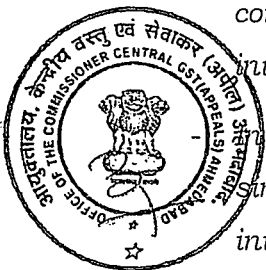
3. Accordingly, the appellant was issued Show Cause Notice No. 43/2022-23 dated 28.11.2022 by the Deputy Commissioner (AE), CGST & Central Excise, Gandhinagar. The said Show Cause Notice has been adjudicated by the adjudicating authority and passed the impugned on the following grounds:

- *that Anti-Evasion wing of CGST Gandhinagar in their investigation has established about the firms M/s. Mahavir Trading and Sales GSTIN: 24DBBPR3590B1ZV {Legal Name Jashiben Ranchhodsinh Rathod} and M/s. Vishwakarma Building Materials GSTIN: 24BSZPD8155R1ZO {Legal Name Rajnikant B Dave} were nonexistent and were found non-operational from registered premises;*
- *During further investigation it was also came to the notice of Anti Evasion wing that above mentioned two firm had issued invoice and passed on ITC without supply of goods to various firms including Noticee;*



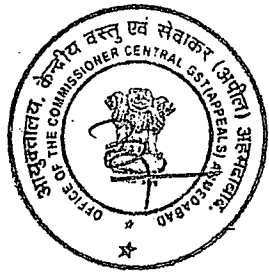
The fact of fake/ bogus firms (i) M/s. Mahavir Trading and Sales GSTIN: 24DBBPR3590B1ZV (Legal Name Jashiben Ranchhodsinh Rathod) and (ii) M/s. Vishwakarma Building Materials GSTIN: 24BSZPD8155R1ZO (Legal Name Rajnikant B Dave) and issuance of fake invoices without supply of materials is neither challenged by the Noticee during investigation of the case nor in their reply to the Show Cause Notice. I further observe that Shri Krunal Mahendrabhai Patel, Director of Noticee firm in their statement dated 10.08.2019 tendered before the Superintendent of CGST & C.Ex. (Anti-evasion), Gandhinagar and stated that; They have made purchase related to building materials from the two firms 1) M/s. Mahavir Trading GSTIN:24DBBPR3590B1ZV and 2) M/s.Vishwakarma Building Materials GSTIN:-24BSZPD8155R1ZO, during October-2018 to February-2019 through agent named Shri Amrit Lal and made payments to the account number provided by Shri Amrit Lal. On perusal of Panchnama dated 17.07.2019 drawn at Principal Place of Business of M/s. Mahavir Trading and Sales at E-502, Shri Sharan Residency, Nr. Aaradhya Home, Zundal Village, Chandkheda, Ahmedabad, he said that the invoices might be fake. Further, he stated that he agreed to voluntarily pay the GST liability availed on the invoices of the above said firms along with interest and penalty;

- Since, the fact of issuance of fake invoice by firms (i) M/s. Mahavir Trading and Sales and M/s. Vishwakarma Building Materials and availment of Input Tax Credit on the strength of invoices issued by above firms is admitted by the Director of Noticee himself, therefore, there is no need to prove again on the part of department. As it is a basic and settled law that what is admitted need not be proved as held by the Hon'ble Supreme Court in the case of CCE, Madras Vs System & Components [2004(165)ELT136(SC)];
- As the said firms are non existent and therefore invoices created in its name become null and void in the eyes of law and therefore no ITC can be availed on the strength of such bogus / fake invoices, by the Noticee as per provisions prescribed in point 'a' of Sub section 2 of Section 16 of the CGST Act, 2017.
- that supplier of the goods to the Noticee, being a non- existent firms, is not in position to prove the veracity of ITC availed by it and any tax paid to the Government through such spurious ITC, cannot be considered to have actually paid the tax to the Government as envisaged in para 2(c) of Section 16 of the CGST Act 2017;
- that the burden of proof, in case of eligibility of ITC, availed by the Noticee, lies entirely on the Noticee, as given in Section 155 of the CGST Act, 2017. in the instant case, the Noticee had failed to satisfy all the mandatory conditions to make him eligible for ITC on supply of goods mentioned in invoices, as envisaged in Section 16 of CGST Act, 2017;
- in the instant case, it is clear that there cannot be any supply of goods since the suppliers had been found fake/non-existent. Therefore the invoices were have been issued only to pass-on, receive ineligible ITC. In such cases the payments made were just to cover up the fraud. Payments were made and then received back through different channels in cash or i; any other form. Therefore, since there was no supplier, the recipient cannot receive goods and payments shown become null and void (as the supplier doesn't exist), therefore the Noticee was not eligible to avail the ITC;
- the fact of incorrectly taking and utilizing the input tax credit without actual receipt of goods, in contravention of the provisions of Section 16(1) & (2) of CGST Act 2017 is established as discussed in previous paras. The issue of imposition of penalty is not affected or based on amount of incorrect ITC utilized by the Noticee, therefore, the benefit extended to the Noticee for computation of Interest under Section 50 of CGST Act, 2017 would not affect the issue of imposition of penalty. The Noticee is correctly liable for penalty under Section 122(1)(vii) read with Section 74(1) of the CGST Act, 2017.



4(i). Being aggrieved with the impugned order, the appellant preferred this appeal on 26.12.2023 on the following grounds:-

- that the disputed ITC in question of Rs. 65,58,382/- is duly eligible on merits;
- that we have duly fulfilled all the aforesaid conditions as per Section 16(2) of the Gujarat State GST Act, 2017. We submit that we are in possession of the tax invoices based on which the disputed ITC has been claimed. We further submit that we have duly received the underlying supplies as evidenced by the E-way bill records appended with the appeal paper book;
- that the E-way bills duly demonstrate the details of the vehicles in which the inputs were transported and received by us. The said vehicle details as well as the journey in question can be verifiable from the toll records maintained by NHAI. We further submit that despite the availability of the E-way bills, Ld.;
- We also submit that the impugned SCN as well as the order without any material or evidence falsely asserts that the payments made by us to the given suppliers were just a cover up and that we might have received the said amount back through cash or other modes. We submit that such an assertion without any basis cannot be sustained;
that in the given facts we have undisputedly established that we are in possession of the tax invoice, received the underlying supplies and have made the payment to the supplier and hence we submit that we have duly discharged the burden u/s 155 of the CGST Act, 2017;
- that the recovery of the tax is required to be made first from the suppliers and that the impugned SCN, as well as 010, fails to indicate the steps taken to recover the dues from the suppliers and directly seeks to recover the tax from the recipient by way of denying the disputed ITC and hence even on the said ground the impugned proceedings deserve to be vacated/quashed;
- that in the absence of the tenability of the demands of the ITC, interest cannot be recovered u/s 50 of the CGST Act, 2017;
- that in the absence of tenability of the demands of ITC, the penalty cannot be recovered u/s 74(1) of the CGST Act, 2017;
- that the entire disputed ITC is recovered based on alleged irregularities by our suppliers. We submit that the impugned SCN, as well as the impugned order, fails to indicate or establish as to how we have played any role in the said irregularities;



- that it is settled law that a penalty can be imposed only where it has been established that the assessee has played an active role in the alleged evasion of the tax. We rely on the following decisions:

- * Collector of Central Excise, Hyderabad v. Chemphar Drugs and Liniments, Hyderabad, (1989) 2 sec 127.
 - * Padmini Products Vs. CCE 1989(43) ELT 195(SC)
 - * Cosmic Dye Chemical v. Collector of Central Excise, Bombay, (1995) 6 SCc 117
 - * Anand Nishikawa Co. Ltd. v. Commissioner of Central Excise, Meerut, (2005) 7 SCC 749
 - * Gopal Zarda Udyog Vs. CCE 2005 (188) ELT 251 (SC)
 - * Lubri -Chem Industries Ltd. Vs. CCE 1994 (73) ELT 257 (SC);
- We hence submit that in the absence of any intent to evade the tax, the penalty cannot be levied u/s 74(1) and hence even on this ground the impugned order demanding penalty deserves to be quashed;

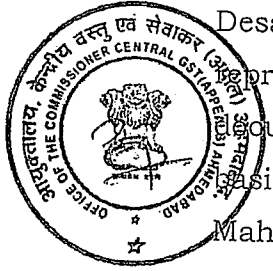
In view of the above the appellant pray to set aside the impugned OIO as well as SCN and allow the appeal in full by quashing the demands of the ITC alongwith interest and penalty.

Personal Hearing:

5. The appellant was granted personal hearing on 06.03.2024. Mr. Abhay Desai, Advocate, appeared for hearing in the matter as authorized representative on behalf of the appellant. They submitted that all the required documents have been submitted. All allegations have been made only on the basis of panchanama at principal place of business on only supplier i.e. M/s. Mahavir Trading and Sales. No evidence of fake supply has been supplied along with SCN. No investigation on record that supplier is fake. No malafide is on record on the part of appellant therefore o penalty should be imposed under Section 74. Tax and Interest payment has already been done so it is requested to waive penalty. He further reiterated the written submissions 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. The issues to be decided in the present appeal are whether the appellant had correctly availed ITC during the period from October 2018 to February 2019 amounting to Rs. 65,58,382/- or otherwise?



7(i). It is observed from the case records that Anti-Evasion wing of CGST Gandhinagar in their investigation has established about the firms (i) M/s. Mahavir Trading and Sales and M/s. Vishwakarma Building Materials were nonexistent and were found non-operational from registered premises. During further investigation it was also came to the notice of Anti Evasion wing that above mentioned two firms had issued invoices and passed on ITC without supply of goods to various firms including appellant. The fact of fake/ bogus firms, M/s. Mahavir Trading and Sales and M/s. Vishwakarma Building Materials and issuance of fake invoices without supply of materials is neither challenged by the appellant during investigation of the case nor in their reply to the Show cause notice.

7(ii). It is further observed that Shri Krunal Mahendrabhai Patel, Director of appellant firm in their statement dated 10.08.2019 tendered before the Superintendent of CGST & C.Ex. (Anti-evasion), Gandhinagar and stated that they have made purchase related to building materials from the said two firms as mentioned above during October-2018 to February-2019 through agent named Shri Amrit Lal and made payments to the account number provided by Shri Amrit Lal. On perusal of Panchnama dated 17.07.2019 drawn Principal Place of Business of M/s. Mahavir Trading and Sales at E-502, Sharan Residency, Nr. Aaradhya Home, Zundal Village, Chandkheda, Ahmedabad, he said that the invoices might be fake. Further, he stated that he agreed to voluntarily pay the GST liability availed on the invoices of the above said firms along with interest and penalty.

7(iii). As per his statement of Shri Krunal Mahendrabhai Patel, Director of appellant firm, 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, I find 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.

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;]

4[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 utilization of input tax credit admissible in respect of the said supply; and

(c) he has furnished the return under section 39:



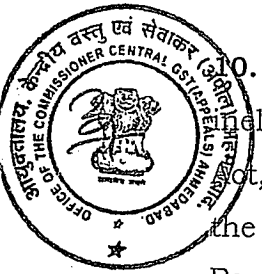
8(iii). From the above, it is clear that supplier of the goods to the appellant, being a non-existent firm, is not in position to prove the veracity of ITC availed by it and any tax paid to the Government through such spurious ITC, cannot be considered to have actually paid the tax to the Government as envisaged in para 2(c) of Section 16 of the CGST Act 2017. The appellant also failed to satisfy all the mandatory conditions to make him eligible for ITC on supply of goods mentioned in invoices. As envisaged in Section 16 of the CGST Act 2017.

9. Further I find that 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 I find that 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 I find 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 has also failed to establish "Supply" of goods, on which ITC was taken, as they are unable to produce the buyer with whom the contract for sale was made. 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. 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 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.



10. In view of the above I find that the appellant is liable for reversal of ineligible ITC amounting to Rs. 65,58,382/- under Section 74(1) of the CGST Act, 2017 alongwith interest amounting to Rs. 5,66,958/- under Section 50 of the CGST Act, 2017 read with Section 74 of the CGST Act, 2017 and penalty of Rs. 65,58,382/- under the provision of Section 74 of the CGST Act 2017 read with Section 122(1)(vii) of the CGST Act, 2017. Further I find that the appellant paid/reversed the said ITC alongwith interest. However, the appellant has not agreed to pay penalty of Rs. 65,58,382/-.

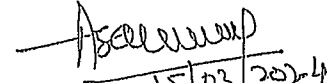
11. In the instant case, the appellant has referred various judgements in his written submission and stated that it is settled law that a penalty can be imposed only where it has been established that the assessee has played an active role in the alleged evasion of the tax. I find that the department stand and 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 I find that the appellant had deliberately availed such inadmissible ITC with sole intention to defraud the Government Exchequer. Had the departmental officers not initiated the enquiry, such wrong availment of ITC would have remained unnoticed and the appellant would have continued to enjoy the unlawful benefit. Accordingly, it is a clear case of wilful mis-statement and suppression of facts by the appellant with intent to avail the ineligible ITC which is liable to be recovered alongwith interest and penalty in

terms of Section 50 and Section 74 of the CGST Act, 2017 read with Section 74 of the GGST Act, 2017 and Section 122(1)(vii).

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।

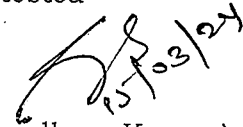
The appeal filed by the appellant stands disposed of in above terms.


15/03/2024
(Adesh Kumar Jain)

Joint Commissioner (Appeals)

Date: 15.03.2024

Attested


(Sandheer Kumar)
Superintendent (Appeals)

By R.P.A.D.

To,
M/s. PKS Technobuild Private Limited,
A-22, Natraj Bankers Society,
Kheralu Road, Visnagar, Mehsana,
Gujarat-384315.



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(RRA), CGST, Gandhinagar Commissionerate.
5. The Assistant Commissioner, CGST, Division- Mehsana, Gandhinagar Commissionerate.
6. The Superintendent (Systems), CGST Appeals, Ahmedabad.
7. Guard File.
8. P.A. File.



