

आयुक्त (अपील) का कार्यालय,

Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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DIN- 20240464SW00003833BA

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या File No : GAPPL/ADC/GSTP/1464/2024 -APPEAL / 11143 - 50

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-003-APP-JC- 01 /2024-25

दिनांक Date : 10.04.2024 जारी करने की तारीख Date of Issue : 16.04.2024

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. SUPDT/PK/03/CGST/KALOL/2023-24 dated 24.11.2023 issued by The Superintendent, CGST AR-IV. Division- Kalol, Gandhinagar Commissionerate.

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

Appellant	Respondent
M/s Firstcare Biosystem Private Limited, 228/1/4, Dantali Industrial Owner Association, Nr Vadsar Air Force Station, Gota Vadsar Road, Dantali, Ta - Kalol, Gandhinagar, Gujarat, 382721	The Superintendent, CGST AR-IV, Division- Kalol, 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-APPEALBRIEF FACTS OF THE CASE :

M/s. Firstcare Biosystem Private Limited, 228/1/4, Dantali Industrial Owner Association, Near Vadsar Air Force Station, Gota Vadsar Road, Dantali, Ta-Kalol, Gandhinagar, Gujarat-382721 (hereinafter referred to as "the appellant"), holding GST Number 24AADCF2224K1ZX has filed appeal against Order-In-Original No. Supdt/PK/03/CGST/Kalol/2023-24, dated 24.11.2023 (hereinafter referred to as the "impugned order") passed by the Superintendent, CGST & C. Ex., Range-IV, Division-Kalol, Gandhinagar Commissionerate (hereinafter referred to as the "adjudicating authority").

2(i). The facts leading to this case are that the appellant is engaged in the supply of pipette, controller and tips. The audit of the records of the appellant was conducted for the period from July 2017 to March 2019. The objections raised are as under:-

Revenue para.	Description	Tax	Interest	Penalty	Remarks
1	Non-payment of IGST on Ocean Freight	Rs. 1,506 (As per section 74(1) of the CGST Act 2017 read with Section 20 of the IGST Act).	As per section 50(1) of the CGST Act 2017 read with Section 20 of the IGST Act.	As per section 74(1) of the CGST Act 2017 read with Section 122(2)(b) the Act.	Demand dropped by the Adjudicating Authority
2	Ineligible ITC in terms of Section 17(5) of CGST Act 2017	Rs. 53,622 (paid Rs. 16,722 vide DRC-03) Outstanding liability Rs. 36,900/-	Interest on Rs. 36,900/- under section 50(1) of the CGST Act 2017	Rs. 53,622 (As per section 74(1) of the CGST Act 2017 read with Section 122(2)(b) the Act.)	-
3	Non-payment of tax on scrap sales	Rs. 894 (paid vide DRC-03)	Rs. 406 (paid vide DRC-03)	Rs. 10,000 (As per section 74(1) of the CGST Act 2017 read with Section 122(2)(b) the Act.)	-
4	Non-payment of tax on sales of Factory Jeep	Rs. 13,284 (paid vide DRC-03)	Rs. 5490 (paid vide DRC-03)	Rs. 10,000 (As per section 74(1) of the CGST Act 2017 read with Section 122(2)(b) the Act.)	-

2(ii). During the course of audit on verification of records, it is observed that during the F. Y 2017-18 (July to Mar) and F.Y. 2019-20 the appellant had taken ITC on purchase and other services received on which ITC is ineligible as

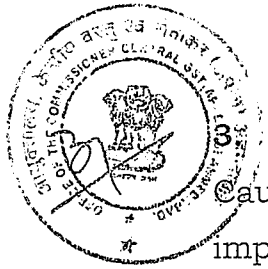
per Section 17(5) of CGST Act 2017. On being pointed out the appellant agreed to pay the wrongly availed ITC alongwith interest on all purchase and other services received except for the 500 pen drives purchased from Labh Stationery & Handicraft amounting to Rs. 36,900/-. But the appellant has not agreed to reverse the ITC amounting to Rs. 36,900/- alongwith interest and penalty and go for appeal.

2(iii). During the course of audit on verification of records, it is observed that during the F. Y 2017-18 (July to Mar) and F.Y. 2018-19 the appellant had failed to discharged the tax on scrap sales generated as plastic scrap. On being pointed out the appellant agreed to pay the tax of Rs. 894/- alongwith interest of Rs. 406/-. However the appellant has not agreed to pay the penalty amounting to Rs. 10,000/-, as per section 74(1) of the CGST Act 2017 read with Section 122(2)(b) the Act and go for appeal.

2(iv). During the course of audit on verification of records, it is observed that during the F. Y 2017-18 (July to Mar) and F.Y. 2018-19 the appellant had failed to discharged the tax on sales of Factory Jeep. On being pointed out the appellant agreed to pay the tax of Rs. 13,284/- alongwith interest of Rs. 5,490/-. However the appellant has not agreed to pay the penalty amounting to Rs. 10,000/-, as per section 74(1) of the CGST Act 2017 read with Section 122(2)(b) the Act and go for appeal.

Accordingly, the appellant was issued Show Cause Notice. The Show Cause Notice has been adjudicated by the adjudicating authority vide the impugned order dated 24.11.2023. The adjudicating authority has passed the impugned order and confirm the SCN, on the following grounds;-

- *ITC of Rs. 36,900/- for inputs purchase from Labh Stationery and Handicraft which has been used for the purpose of marketing with brand name of Accumax embossed on it. However the reply for the exact usage of such large number of pen drive is not justifiable. Hence, such input tax credit is not admissible. The noticee vide their reply dated 30.07.2021 stated that as per Section 73(8) of the CGST Act 2017, where any person chargeable with tax, pays the said tax along with interest payable under Section 50 within thirty days of issue of notice, no penalty shall be payable. However, in accordance of Sections 74(1) of the Act read with the provisions of Section 122(2)(b) of the Act, the noticee is liable for penal action as they have suppressed the facts with an intent to evade the*



reversal of tax, as in the monthly GSTR-3B returns nor in the GSTR-9 returns;

- that the noticee had not paid the tax on the income received as sale of plastic scrap for the F.Y. 2018-19. The appellant had paid the tax and interest. The noticee vide their reply dated 30.07.2021 stated that as per Section 73(8) of the CGST Act 2017, where any person chargeable with tax, pays the said tax along with interest payable under Section 50 within thirty days of issue of notice, no penalty shall be payable. However, in accordance of Sections 74(1) of the Act read with the provisions of Section 122(2)(b) of the Act, the noticee is liable for penal action as they have suppressed the facts with an intent to evade the reversal of tax, as in the monthly GSTR-3B returns nor in the GSTR-9 returns;
- that the noticee have booked income on sales of fixed assets amounting to Rs. 73,796/- in indirect incomes. However they had paid the tax amounting to Rs. 13284 and interest amounting to Rs. 5490/-. The noticee vide their reply dated 30.07.2021 stated that as per Section 73(8) of the CGST Act 2017, where any person chargeable with tax, pays the said tax along with interest payable under Section 50 within thirty days of issue of notice, no penalty shall be payable. However, in accordance of Sections 74(1) of the Act read with the provisions of Section 122(2)(b) of the Act, the noticee is liable for penal action as they have suppressed the facts with an intent to evade the reversal of tax, as in the monthly GSTR-3B returns nor in the GSTR-9 returns;



4. Being aggrieved with the impugned order dated 24.11.2023; the appellant preferred this appeal on 09.02.2024 on the grounds, which are reproduced in the following paragraphs:

- tax payer is aggrieved on ITC amounting to Rs. 36,900 considered as Ineligible ITC stating that ITC availed on supply was used in the course and furtherance of the business and penalty charged by assessing officer stating that there was genuine mistake on part of taxpayer and its clerical in nature with no intention to evade tax payment. And hence ITC should be allowed and penalty under section 74 of CGST Act 2017 should not be levied;
- that legislature has provided two separate sections Section 73 and Section 74. The legislature is fully aware that while taxing law should provide for stringent provisions for fraudulent acts, in its wisdom it is also fully aware that there is always possibility of genuine error of interpretation, oversight

- and like mistakes that might occur by supplier in the various stages of compliance;
- that whether the use of section 74 is automatic and mechanical or is to be appropriately reasoned by the tax authorities before applying the section. The judgment and reasoning of the tax officer is to be backed by sufficient and proper corroborative evidence. Applicability of Section 74 cannot be mechanical in nature;
 - that in the instant case liability arising, if any, is due to the case of a genuine mistake on the end of supplier and there was no instance of Tax not paid or input tax credit wrongly availed or utilized by reason of fraud or any wilful-misstatement or suppression of facts to evade tax. There was no intent to evade tax, the error was mainly genuine oversight and clerical in nature;

Additional Submission:

- that the taxpayer has purchased pen drive with brand name "Accumax" embossing on that and the same has been distributed to his customers to create an awareness about brand "Accumax" in the market. The only intention to distribute pen drive with brand name "Accumax" embossing on that to his customers was to create an identity of brand "Accumax" in market and using the same as marketing tool to expand his business. Based on that, it can be concluded that ITC availed on purchases made of pen drive with brand name "Accumax" embossing on that was used in the course and furtherance of the business and hence ITC should be disallowed under Section 17(5) of the CGST Act 2017;
- that in the due process of Audit, if any discrepancy is noticed the same cannot be assumed to be intention to evade tax;
- that in the instant case the assessing officer has not found any sufficient and proper corroborative evidence during audit proceedings and assessment proceedings and the assessing officer has invoked section 74 merely on ground that tax payer has not mentioned disputed ITC and tax in GSTR 3B and GSTR9 of respective periods;
- that in the instant case, the tax payer has already paid tax and interest as per section 50(1) of the CGST Act 2017 on 06.04.2021 i.e before issue of SCN which was issued on 02.07.2021 and the same has been also mentioned in order passed by assessing officer. And hence penalty under Section 733 of the CGST Act 2017 should not be levied.



In view of the above the appellant request to drop the tax and penalty.

Personal Hearing:

5. Personal hearing in the matter was fixed on 20.03.2024. Mr. Parth Solanki, C.A., attended personal hearing on behalf of the *appellant* as the authorised representative. During the personal hearing they submitted that i.r.o. para-2 it is related to furtherance of business and all are recorded transactions therefore, penalty under Section 74 is not leviable (Rs. 36,900/-). Rest paid with interest before issuance of SCN. In rest of the paras all dues paid alongwith interest. Since there is no malafide intension or any suppression, penalty under Section 74 is not impossible. In view of above requested to allow appeal. Submitted additional submissions during personal hearing.

Discussion and findings:

6. I have carefully gone through the facts of the case, grounds of appeal, additional submissions made in the Appeal Memorandum and documents available on record. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, confirming the Ineligible ITC in terms of Section 17(5) of CGST Act 2017 of Rs. 36,900/- under Section 74(1) of the CGST Act 2017 alongwith interest under Section 50(1) of the CGST Act 2017 and penalty of Rs. 53,622/-section 74(1) of the CGST Act 2017 read with Section 122(2)(b) the Act and penalty section 74(1) of the CGST Act 2017 read with Section 122(2)(b) for Non-payment of tax on scrap sales and Non-payment of tax on sales of Factory Jeep.

7(i). During the course of audit on verification of records, it is observed that during the F. Y 2017-18 (July to Mar) and F.Y. 2019-20 the appellant had the appellant availed ITC of 500 pen drives purchased from Labh Stationery & Handicraft amounting to Rs. 36,900/- of which he is not eligible as per Section 16(1) and Section 17(5) of CGST Act 2017. The relevant para of section 16(1) and Section 17(5) of CGST Act 2017 is reproduced below:

Relevant para of Section 16(1) of CGST Act 2017:


"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.

Relevant para of Section 17(5) of CGST Act 2017:

"Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be applicable in respect of the following, namely:

(g) Goods or Services or both used for personal consumption.

7(ii). As per the above sections, the input tax credit shall not be admissible on the input goods or services which are not used for the furtherance of business. In the instant case, the appellant availed ITC of 500 pen drives purchased from Labh Stationery & Handicraft amounting to Rs. 36,900/-. In this regard the appellant stated that these pen drives are used for the purpose of marketing with brand name of Accumax embossed on it. However, the grounds for purchase of large number of pen drives used for business purpose is not justifiable, as it appears that the same is not used or intended to be used in the course or furtherance of his business. In view of the above, it appears that the appellant has violated the provisions Section 16(1) and Section 17(5) of CGST Act 2017 and are liable to pay tax amounting to Rs. 36,900/- under Section 74(1) of the CGST Act 2017 alongwith interest under Section 50(1) of the CGST Act 2017 and penalty of Rs. 53,622/-section 74(1) of the CGST Act 2017 read with Section 122(2)(b) the Act.



8(i). During the course of audit on verification of records, it is observed that during the F. Y 2017-18 (July to Mar) and F.Y. 2018-19 the appellant had failed to discharged the tax amounting to Rs. 894/- on scrap sales generated as plastic scrap. In view of above, it is pertinent to refer the relevant para of Section 7(1) of the CGST Act 2017 and Notification No. 34/2017-C.T.(Rate) dated 13.10.2017.

Relevant para of Section 7(1) of the CGST Act 2017:

"7. (1) For the purposes of this Act, the expression "supply" includes-

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business".

Relevant para of Notification No. 34/2017-C.T.(Rate) dated 13.10.2017

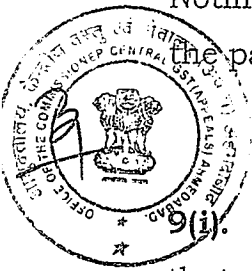
In the said notification-

(A) in Schedule I -2.5%,

(vii) after S. No. 187 and the entries relating thereto, the following serial number and the entries shall be inserted, namely:

"187 A	3915	Waste, Pairings or Scrap, of plastics"
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8(ii). In view of the above, it is observed that sales of plastic scrap attract GST @5%. From the definition of 'supply' that sale of scrap is also one of the forms of supply of goods and appellant have booked income by Sale of plastic scrap and have received a consideration of Rs. 17,890/-. It appears that the consideration is in the course or furtherance of business and accordingly, the appellant has made taxable supplies in order to attract tax @ 5%.Hence, the appellant is liable to pay tax of Rs. 894/- alongwith interest and interest and penalty. The appellant had paid the tax of Rs. 894/- alongwith interest of Rs. 406/-. However the appellant has not paid penalty amounting to Rs. 10,000/-, as per section 74(1) of the CGST Act 2017 read with Section 122(2)(b) the Act. However, in accordance of Sections 74 (1) of the Act read with the provisions of Section 122(2)(b) of the Act, the appellant is liable for penal action as they violated the provisions of Section 74(1) of the CGST Act 2017 and Notification No. 34/2017-C.T.(Rate) dated 13.10.2017 with an intent to evade the payment of tax.



9(i). During the course of audit on verification of records, it is observed that during the audit period the appellant has booked income on sales of fixed assets amounting to Rs. 73,796/- in direct incomes and the income has been booked on sale of factory loading Jeep. In view of above, it is pertinent to refer the relevant para of Section 7(1) of the CGST Act 2017 and Notification No. 08/2018-C.T.(Rate) dated 25.01.2018.

Relevant para of Section 7(1) of the CGST Act 2017:

"7. (1) For the purposes of this Act, the expression "supply" includes-
 (a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business".

Relevant para of Notification No. 08/2017-C.T.(Rate) dated 25.01.2018

Sr. No.	Chapter, Heading, Sub-heading or Tariff item	Description of Goods	Rate
2.	8703	Old and used, diesel driven motor vehicles of engine capacity of 1500cc or more and of length of 4000 mm	9%

		<i>Explanation. -For the purposes of this entry, the specification of the motor vehicle shall be determined as per the Motor Vehicles Act, 1988 (59 of 1988) and the rules made there under</i>	
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9(ii). In view of the above, it is observed that from the definition of 'supply' that sale of Factory Loading Jeep is also one of the forms of supply of goods and appellant have booked income by Sale of factory Jeep and have received a consideration of Rs73,796/-. It appears that the consideration is in the course or furtherance of business and accordingly, the appellant has made taxable supplies in order to attract tax @ 18%. Hence, the appellant is liable to pay tax of Rs. 13,284/- alongwith interest and penalty. The appellant had paid the tax of Rs. 13,284/- alongwith interest of Rs. 5,490/-. However the appellant has not paid penalty amounting to Rs. 10,000/-, as per section 74(1) of the CGST Act 2017 read with Section 122(2)(b) the Act. However, in accordance of Sections 74 (1) of the Act read with the provisions of Section 122(2)(b) of the Act, the appellant is liable for penal action as they violated the provisions of Section 7(1) of the CGST Act 2017 and Notification No. 08/2018-CT.(Rate) dated 25.01.2018 with an intent to evade the payment of tax.



It may further be stated that the appellant is well versed with the GST laws and provisions to taxations. They should have taken reasonable steps to ensure genuineness of ITC being availed by them and payment of outward tax liability. As the burden lies on the said appellant to demonstrate that he had taken such care. In the instant case, the appellant failed reversed the ineligible ITC and failed to disclose their actual taxable supply by not declaring of taxable value of supply by them and by not filing proper GST returns, i.e. in GSTR 3B and GSTR-9 for the audit period, though they were having income which was liable to GST. These acts of non filing of proper GST returns, suppressing the material facts from the department were done with an intent to evade the payment of GST liability. The government has from the very beginning placed full trust on the tax payer, accordingly measures like self assessment etc. based on mutual trust and confidence have been put in place. All these operate on the basic and fundamental premise of honesty of the tax payer; therefore, the governing statutory provisions create an absolute liability on the tax payer when any provision is contravened or there is breach of trust placed on them. Such contravention on the part of the appellant tantamount to willful misstatement and suppression of facts with intent to evade the payment

of the GST. It is evident that such fact of contravention and non- payment of GST liability, as discussed earlier, on the part of the appellant only came to the notice of the department has conducted audit by the Audit.

11. 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, the impugned order of the adjudicating authority is legal and proper hence upheld.

अपील कर्ता 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
10/04/2024
(Adesh Kumar Jain)

Joint Commissioner (Appeals)

Date: 10.04.2024

Attested

Sandheer Kumar
10/04/24

(Sandheer Kumar)
Superintendent (Appeals)

By R.P.A.D.

M/s. Firstcare Biosystem Private Limited,
228/1/4, Dantali Industrial Owner Association,
Near Vadsar Air Force Station,
Gota Vadsar Road, Dantali, Ta-Kalol,
Gandhinagar, Gujarat-382721.



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 (RRA), CGST, Gandhinagar Commissionerate.
5. The Deputy/Asstt. Commissioner, CGST, Division- Kalol, Gandhinagar Commissionerate.
6. The Superintendent, Range-IV, CGST, Division- Kalol, Gandhinagar Commissionerate.
7. The Superintendent (Systems), CGST Appeals, Ahmedabad.
8. Guard File.
9. P.A. File.

