



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

07926305065-

टेलिफैक्स 07926305136

DIN- 20240464SW000000E9A9

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या File No : GAPPL/ADC/GSTP/1179/2024 -APPEAL

1151 - 58

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-003-APP-JC- 02 /2024-25

दिनांक Date : 15.04.2024 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. 01/SM/SUPIDT/HMT-1/2023-24 dated 29.09.2023 issued by The Superintendent, CGST AR-I, Division- Himmatnagar, Gandhinagar Commissionerate.

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

Appellant	Respondent
M/s Roshni Mobile (Legal Name: Mohmedzuber Rafikbhai Memon), 0, Mochi Line, Juna Bazar, Himatnagar, Sabarkantha-383001	The Superintendent, CGST AR-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 अधीनस्थ 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 Roshni Mobile, (Legal Name: Mohmedzuber Rafikbhai Memon), 0, Mochi Line, Juna Bazar, Himatnagar, Sabarkantha-383001 (hereinafter referred to as the "appellant") has filed the appeal on 25.01.2024 against Order-in-Original No. 01/SM/Supdt/HMT-1/2023-24, dated 29.09.2023 (hereinafter referred to as the "impugned order") passed by the Superintendent, Central GST & C.Ex., Range-1, Division- Himmatnagar, Gandhinagar Commissionerate (hereinafter referred to as the "adjudicating authority").

2(i). Brief facts of the case in the present appeal is that the appellant registered under GSTIN 24BLYPM8199J1ZY, is engaged in the activity of trading of goods of HSN 85171110 (Telephone Sets, Mobile Phones and Peripheral). The appellant 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 15.12.2022 was issued to the appellant conveying the objection noticed during the scrutiny of returns with a request to pay the total amount of tax/interest/late fee of Rs. 18,36,466/- (CGST 9,21,819/- and SGST 9,14,647) as mentioned below alongwith applicable interest and penalty where applicable.



Sr. No.	Description	IGST	CGST	SGST	Total
1	Short payment of tax in GSTR-3B against outward taxable supply in declared in GSTR-1M	0	94,663	94,663	1,89,326
2	Violation of Section 16(4) of CGST Section, 2017	0	7,76,984	7,76,984	15,53,968
3	Interest under Section 50 of CGST Act, 2017 for late payment of tax	0	7,172	0	7,172
4	Late fee for late/non-filing of returns under Section 47 of CGST Act, 2017	0	43,000	43,000	86,000
			9,21,819	9,14,647	18,36,466

2(ii). A Show Cause Notice was issued to the appellant on dated 27.04.2023. Further, the adjudicating authority passed the impugned order dated 29.09.2023 and

(i) Confirm the demand of Short payment of tax in GSTR-3B against outward taxable supply in declared in GSTR-1M amounting to Rs. 1,89,326/- (CGST Rs. 94,663/- and SGST 94,663/-) under the provision of Sections 73(1) of the CGST Act, 2017 alongwith interest under the provisions of Section 50(1) of CGST Act, 2017 and penalty of Rs. 18,933/- under the provisions of Sections 73(1) of the Act readwith the provisions of Section 122(2)(a) of the, Gujarat GST Act, 2017;

(ii) Confirm the demand of wrong availment of Input Tax Credit ('ITC') amounting to Rs. 15,53,938/- (Rs.7,76,984/- (CGST) + Rs.7,76,984/- (SGST)) to be recovered

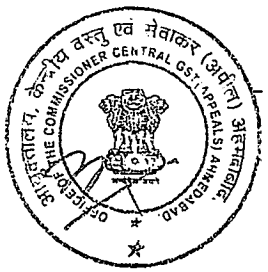
under the provisions of Sections 73(1) of the CGST/GGST Act 2017 alongwith interest under the provisions of Section 50(3) of CGST Act, 2017 and penalty of Rs. 1,55,394/- under the provisions of Sections 73(1) of the Act readwith the provisions of Section 122(2)(a) of the, Gujarat GST Act, 2017;

(iii) Confirm the demand of interest amounting to Rs. 7,172/- (Rs.7,172/- (CGST)), for late payment of tax during the month of July 2017, under Section 50(1) of the CGST Act, 2017;

(iv) and drop the demand for the late fee of Rs. 86,000/- (CGST Rs. 43,000/- and SGST Rs. 43000/-) under Sections 47(1) of the CGST Act 2017 read with Section 41(1) of the Gujarat GST Act, 2017.

The adjudicating authority has passed the impugned order and confirmed the demands as mentioned above on the following grounds:

- that there is a mismatch in taxable liability shown in GSTR-1 M and tax paid by the taxpayer in their GSTR-3B returns. The taxpayer has short paid the GST liability amounting to Rs. 1,89,326/-;
- the said taxpayer has contravened the provisions of sub-section (1) to Section 39 as the tax payer has reduced tax liability in the GSTR-3B from July 2017 to March 2018 and has short discharged the tax amounting to Rs. 1,89,326/-;
- the total ITC of Rs. 15,53,968/- (CGST:7,76,984/-, SGST:7,76,984/-) availed during the period July 2017 to March 2018 will be in admissible under the proviso of Section 16(4) of the Central Goods and Services Act, 2017 because the said taxpayer was not entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39(1) discussed supra, as the said taxpayer has filed/furnished returns for the period from August 2017 to March 2018 after due date i.e on 30.09.2020;
- the said taxpayer has not filed their GSTR-3B in time bound manner as prescribed in CGST Act 2017, as amended. They have also not paid their GST liability timely to the Government and accordingly liable for payment of interest amounting to Rs.7,172/- on delay cash payment as applicable under Section 50(1) of the CGST Act, 2017;
- In view of the above, it appears that the said taxpayer has contravened the provisions of:-
 - o Section 39(9) of CGST Act, 2017 as they have short paid the tax compared to liability declared under Section 37(1) Section 16(4) of the CGST Act, 2017 read with the provisions of 16(2) & 16(4) of Gujarat GST Act, 2017 as they have availed the ITC after the due date of furnishing of the return under section 39 for the month of September



following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier. Sections 39(7) of the CGST Act, 2017 read with the provisions of Rule 85(3) of the Central Goods and Services Rules, 2017 ('CGST Rules and Section 39(7) of the Gujarat GST Act, 2017 read with Rule 85(3) of the Gujarat GST Rules, 2017 (collectively 'Rules') as they have failed to reverse the ITC wrongly availed by them within the prescribed due dates; Section 50(1) and Section 50(3) of the CGST Act 2017 and Gujarat GST Act, 2017 as interest has not been paid for late filing of returns and delay in payment of Tax within prescribed time limit; Section 47 of the CGST Act, 2017 and Section 47 of the Gujarat GST Act, 2017, as late fee on filing of (GSTR under section 39 of CGST Act, 2017 and Section 39 of Gujarat GST Act, 2017.

4. Being aggrieved with the impugned order, the appellant preferred the present appeal on 25.01.2024 for the following reasons:

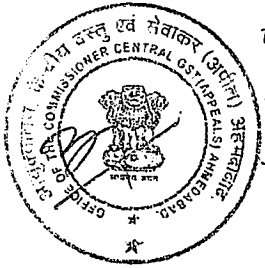


Looking to the facts & circumstances of the case & in law the demand of tax confirmed at Rs. 1,89,326/- (CGST Rs.94,663 & SGST Rs.94,663) u/s 37(1), 39(1), 39 (9) r.w.s 73 (1) of the COST Act. 2017 read with the similar provision of the Gujarat GST Act, 2017 along with interest u/s 50() of the both the Acts is not legal & valid;

- that the impugned demand along with interest is confirmed based on the difference between outward supply shown in Form-GSTR-1 and Form-GSTR-3B. Appellant has issued few credit notes in the books of account but the same are not passed through the FORM-GSTR-1 and hence the difference is aroused. However, at this stage appellant is not able to find out the exact details of the said credit notes and hence not pressing this ground of appeal in the present proceedings;
- Looking to the facts & circumstances of the case & in the law Ld. Adjudicating Authority has grossly erred in disallowing the entire ITC of Rs. 15,53,938/- (Rs.7, 76,984 CGST & SGST Rs. 7,76,984) u/s 16 (4) t .w .s 73(1) CGST Act, 2017 read with the similar provision of the Gujarat GST Act, 2017;
- Appellant has filled his Form GSTR-3B returns for the F.Y.2017-18 on 30/09/2020. The said returns were filled in line with the GST returns filling late fees waiver amnesty scheme notified vide CBIC Notification No.52/2020 Central Tax Dated 24.06.2020. All these returns were filled on payment of the applicable late filing fees as per the said notification only. Thus, the impugned ITC which is disallowed is for the FY 2017-18, the GSTR Returns of which is

filled in September-2020, it is submitted that case of the appellant is not like wherein ITC of FY 2017-18 is claimed in the Form-GSTR-3B of subsequent year. Thus, the original regular monthly return in the FORM-GSTR-3B of Pr 2017-18 are late filled by the appellant. Considering this undisputed fact of the present case, it is most respectfully submitted that, bar of the limitation to claim of ITC as provided u/s 16(4) is not applicable in the present case as ITC of the relevant year is claimed in the late filled GST Returns of the same year;

- amnesty scheme notified vide CBIC Notification No.52/2020 Central Tax Dated 24.06.2020 does not anywhere specify in the said GST Amnesty Notification that the ITC shall be barred by Section 16(4);
- that reference may also be made to Circular No. 26/26/2017-GST dated 29th December 2017 - Para 3.2 (Page-29-39), the filing of Form GSTR-2 and Form GSTR-3 was kept in abeyance and finally omitted with effective from 01.10.2022. Therefore, the time limit specified in Section 16(4) was also practically not possible to comply as the functioning of the Form-GSTR-2 & GSTR-3 is not enabled on the GSTN portal which is the only a platform to file any form under the GST laws;
- submitted that registered person is unable to file the return under Section 39 unless they make full payment of GST and late filing fees if any. On perusal of Section 39, it is clearly evident that payment of tax is not a pre-condition for filing the return. However, the GST portal is not allowing the registered person to file the return without making full payment of tax thereby the common portal has barred the tax payers in complying with provisions of Section 41 which entitles every registered person to claim ITC in the return filed under Section 39;
- that in the case of Tvl.Kavin HP Gas Gramin Vitrak V Commissiner of Commercial Tax, the Hon'ble Madurai Bench of the Madras High Court in its WP(MD) Nos. 7173-7174 of 2023 & WP(MDP) Nos.6764-6765 of 2023 has quashed the order on the similar facts of the case and remanded matter back for a the reconsideration;



PERSONAL HEARING :

5. Personal hearing in the present appeal was fixed/held on 07.03.2024, 15.03.2024 and 27.03.2024. Shri Shakir V. Chauhan, C.A., Authorized Representative appeared in person on behalf of the appellant in the present appeal. During P.H. he has submitted additional submission and stated that as regards the Credit Note specific details not available. The same is not declared in GSTR-1 due to mistake of accountant. Second issue is regarding late filing of returns (GSTR-3B) for the financial year 2017-18 filed in the year September 2020. Returns were filed as per amnesty scheme in view of Notification NO. 22/2020. Since late filing of GSTR

3B has been allowed, ITC credit of the relevant period is also allowed. All the condition of Section 16(2) are complied therefore the provisions of Section 16(4) not attracted. It is further submitted that they have availed the ITC as per books of account which are in conformity to Section 41 of CGST Act. Only utilized in the month of September 2020 therefore they have complied the said provisions (Reference para 8 of Additional Submission where in Hon'ble Supreme Court Bharti Airtel case). On time limitation the order was uploaded on 23.01.2024 DRC-07. Thus it is uploaded beyond the limitation as per Circular No. / Instruction No. 04/2023 GST dated 23.01.2023 (Ref page 63 of Additional Submission). He further reiterated the written submission and requested to allow appeal.

DISCUSSION AND FINDINGS:

6. I have gone through the facts of the case, written and additional submissions made by the 'appellant'. It is observed that the main issue to be decided in the instant case is whether (i) the appellant had made short payment of Tax amounting to Rs. 1,89,326/- as per reconciliation of GSTR-1 and GSTR-3B and (ii) the appellant had wrongly availment of Input Tax Credit (ITC) amounting to Rs. 15,53,938/- as per Section 16(4) of the CGST Act 2017 and (iii) the appellant is liable to pay interest under Section 50 of CGST Act 2017 for late payment of tax.

7. In respect of first issue, it is observed that the appellant shown the outward tax liability as per GSTR-1 is Rs. 17,13,040/- and as per GSTR-3B is Rs. 15,23,714/-. The appellant in this regard stated that the difference in tax liability of Rs. 1,89,326/-. The appellant stated in his ground of appeals that the difference arises between GSTR-1 and GSTR-3B, as appellant has issued few credit notes in the books of account but the same are not passed through the FORM-GSTR-. However, at this stage appellant is not able to find out the exact details of the said credit notes and hence not pressing this ground of appeal in the present proceedings. In view of the above it is observed that the appellant has contravened the provisions of Section 39 of the CGST Act 2017 and short-discharged the tax amounting to Rs. 1,89,326/-. Hence, the same is liable to be recovered alongwith interest under Section 50(1) of the CGST Act 2017 and penalty under Section 73(1) of the CGST Act 2017 read with Section 122(2)(a) of the CGST Act 2017.

8(i). In respect of second issue, it is observed that the appellant had wrongly availed ITC to the tune of Rs. 15,53,968/- (CGST Rs. 7,76,984/- and SGST Rs. 7,76,984/-) for the return period from July 2017 to March 2018 filed on 30.09.2020 in contravention to the provisions of Section 16(4) of the CGST Act, 2017. The last date for filing GSTR-3B for the month of September

2018 was 25.10.2018, as per Notification No. 55/2018-CT dated 21.10.2018 and last date of filing the Annual return for the financial year 2017-18 was 05.02.2020, as per Notification No. 06/2020-CT dated 03.02.2020. Accordingly, the appellant was eligible to avail the ITC for the financial year 2017-18 in their GSTR 3B return upto 25.10.2018. However in the instant case the appellant has filed their GSTR 3B returns for the return period from July 2017 to March 2018 on 30.09.2020 and availed ITC.

8(ii). In view of the above the relevant provisions i.e Section 16(4) and Section 39(1) of the CGST Act in this regard are as under:-

Section 16(4) of the CGST Act, 2017:

(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the 6[thirtieth day of November] following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier.

Provided that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under section 39 for the month of September, 2018 till the due date of furnishing of the return under the said section for the month of March, 2019 in respect of any invoice or invoice relating to such debit note for supply of goods or services or both made during the financial year 2017-18, the details of which have been uploaded by the supplier under sub-section (1) of section 37 till the due date for furnishing the details under sub-section (1) of said section for the month of March, 2019.]

Section 39(1) of the CGST Act, 2017:

"Every registered person, other than an Input Service Distributor or a non resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars as may be prescribed on or before the twentieth day of the month succeeding such calendar month or part thereof."

8(iii). In this regard the appellant contended that they had filled their GSTR-3B returns for the F.Y.2017-18 on 30/09/2020. The said returns were filled in line with the GST returns filling late fees waiver amnesty scheme notified vide CBIC Notification No.52/2020 Central Tax Dated 24.06.2020.

3

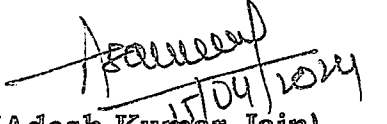
Thus, the impugned ITC which is disallowed is for the FY 2017-18, the GSTR Returns of which is filled in September-2020, it is submitted that case of the appellant is not like wherein ITC of FY 2017-18 is claimed in the Form-GSTR-3B of subsequent year. Thus, the original regular monthly return in the FORM-GSTR-3B of FY 2017-18 are late filled by the appellant. Considering this undisputed fact of the present case, bar of the limitation to claim of ITC as provided u/s 16(4) is not applicable in the present case as ITC of the relevant year is claimed in the late filled GST Returns of the same year. Amnesty scheme notified vide CBIC Notification No.52/2020 Central Tax Dated 24.06.2020 does not anywhere specify in the said GST Amnesty Notification that the ITC shall be barred by Section 16(4). However as per the provisions of Section 16(4) and Section 39(1) of the CGST Act, 2017 it is very much clear that the appellant shall not be entitled to taken the ITC in respect of any invoice or debit note for the supply of goods or services or both after the due date of furnishing of the return under Section 39 for the month of September following the end of the financial year of which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier. Further the appellant referred the case of Tvl.Kavin HP Gas Gramin Vitrak V Commissiner of Commercial Tax, the Hon'ble Madurai Bench of the Madras High Court in its WP(MD) Nos. 7173-7174 of 2023 & WP(MDP) Nos.6764-6765 of 2023 has quashed the order on the similar facts of the case and remanded matter back for a the reconsideration. However, the case laws relied upon by the appellant would not be applicable in the present case. Hence, the contention of the appellant is not legally sustainable. Hence, appellant has wrongly availed ITC to the tune of Rs. 15,53,968/- (CGST Rs. 7,76,984/- and SGST Rs. 7,76,984/-) for the return period from July 2017 to March 2018 the same is liable to be reversed under Section 73(1) of the CGST Act 2017 alongwith interest under Section 50(3) of the CGST Act 2017 and penalty under Section 73(1) of the CGST Act 2017 read with Section 122(2)(a) of the CGST Act 2017.

9. In respect of third issue, it is observed that the appellant has not filed their GSTR-3B in time bound manner as prescribed in CGST Act 2017, as amended. They have also not paid their GST liability timely to the Government. In the instant case the appellant has filed their GSTR-3B returns after due date of filing returns and therefore, discharged his tax liability after the due date as prescribed under the CGST Act 2017. Therefore, the appellant is liable to pay interest as per provisions of Section 50 of the CGST Act, 2017, on cash portion of GST for the period July 2017 to March 2018.

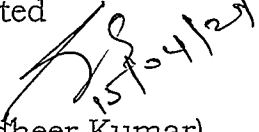
10. In view of the above discussions, I do not find any merit in the contention of the appellant so as to intervene in the impugned order passed by the adjudicating authority. Accordingly, the impugned order of the adjudicating authority is legal and proper hence upheld.

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

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


(Adesh Kumar Jain)
Joint Commissioner (Appeals)
Date: 15.04.2024

Attested


(Sandheer Kumar)
Superintendent (Appeals)

By R.P.A.D.

To

M/s Roshni Mobile,
(Legal Name: Mohmedzuber Rafikbhai Memon),
0, Mochi Line, Juna Bazar, Himatnagar,
Sabarkantha-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, CGST & C.Ex, Division-Himmatnagar, Gandhinagar Commissionerate.
5. The Dy. / Assistant Commissioner (RRA), CGST & C.Ex, Division-Himmatnagar, Gandhinagar Commissionerate.
6. The Supdt., CGST & C.Ex, Range-I, Division- Himmatnagar, Gandhinagar Commissionerate.
7. The Supdt.(Systems), CGST Appeals, Ahmedabad.
8. Guard File
9. P.A. File.



10

11