



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, अम्बावाडी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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DIN- 20240464SW000000F358

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या File No : GAPPL/ADC/GSTP/1481/2024 -APPEAL / ५३४६ - ५३९३

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-003-APP-JC- 04 /2024-25

दिनांक Date : 18.04.2024 जारी करने की तारीख Date of Issue : 22.04.2024

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. ZD240124025930V (SUPDT/MK/01/GST/AR-1/KADI/2023-24 dated 28.12.2023) issued by The Superintendent, CGST AR-I, Division-Kadi, Gandhinagar Commissionerate.

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

Appellant	Respondent
M/s Mayur Packaging, Survey No.142 Paiki 2, Gokuldham Industrial Estate. Godown No 22,23,24.25.26 Irana Road, Budasan kadi, Mahesana, Gujarat, 382715	The Superintendent, CGST AR-I, Division- Kadi, Gandhinagar Commissionerate

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.

- (A)
- (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 अपीलार्थी प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbic.gov.in को देख सकते हैं।

For elaborate, detailed and latest provisions relating to filing of appeal to the appellate authority, the appellant may refer to the website www.cbic.gov.in.

ORDER-IN-APPEAL**BRIEF FACTS OF THE CASE:**

M/s. Mayur Packaging, Survey No. 142 Paiki 2, Gokuldharm Industrial Estate, Godown No. 22,23,24,25,26 Irana Road, Budasan Kadi, Mehsana, Gujarat-382715, (hereinafter referred to as the "appellant") has filed the appeal on 20.02.2024 against Order-in-Original No. ZD240124025930V (Supdt/MK/01/GST/AR-I/Kadi/2023-24), dated 28.12.2023 (hereinafter referred to as the "impugned order") passed by the Superintendent, Central GST & C.Ex., Range-I, Division-Kadi, Gandhinagar Commissionerate (hereinafter referred to as the "adjudicating authority").

2. Brief facts of the case in the present appeal is that the appellant registered under GSTIN 24AAWFM5840QIZD, are engaged in are engaged in the business of dealing in goods and services of HSN 83099030 & 44151000. The scrutiny of the returns of the appellant was conducted for the period from July 2017 to March 2018. In this regard, the office had issued ASMT-10 dated 24.06.2022 and raised objections to the appellant. The details of the objection raised on which demand raised by the adjudicating authority are as under:

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- (i) Difference in ITC availed and utilized in GSTR-3B return and ITC available in GSTR-2A for the periods from July 2017 to March 2018 amounting to Rs. 11,232/- in August 2017. The adjudicating authority drop the demand of Rs. 2,920/-. Out of total ineligible ITC of Rs. 8,312/- (Rs. 11,232/- minus Rs. 2,920/-), appellant paid ITC of Rs. 1,640 alongwith interest but not agree to pay remaining ITC Rs. 6,672/- (Rs. 8,312/- minus Rs. 1,640/-);
- (ii) Short Payment of differential Tax as declared in GSTR- 1 to that paid in GSTR-3B amounting to Rs. 2,05,112/- in September 2017;
- (iii) Invoice No. 34 & 38 mentioned in GSTR-3 of Sep 2017 but not mentioned in GSTR-1 of Sep 2017 amounting to Rs. 33,428/- (CGST Rs. 16,714/- and SGST Rs. 16,714/-);
- (iv) Short payment of tax amounting to Rs. 10,113/-in GSTR-9 for the period 2017-18;

- (v) Penalty of Rs. 10,000/- under Section 125 of the CGST Act 2017 for supply of goods under HSN 72 and 73 under which he was not registered in 2017-18.

3. DRC-01A was issued to the appellant on 08.09.2022 to pay differential amount of tax, however the appellant refused to pay the same. Further, the adjudicating authority passed the impugned order dated 28.12.2023 and confirmed the demand as mentioned above under Section 74(1) of the CGST Act, 2017 read with Section 20 of the IGST alongwith interest under Section 50(1) of the CGST Act 2017 and penalty under Section 74(1) of the CGST Act 2017 read with Section 122(2)(b) of the Act read with Section 20 of the IGST Act on the following grounds:-

- that the taxpayer has availed excess ITC of Rs.8,312/- vis-a-vis available in GSTR 2A statement and utilized the same to discharge their duty liability. Contention of the taxpayer that there is a difference between GSTR 3B and GSTR 9 does not hold ground as GSTR 9 is merely an statement and does not have any impact on credit ledger or outward/inward liabilities;
- the demand of Short Payment of differential Tax as declared in GSTR-1 to that paid in GSTR-3B of Rs. 2,05,112/-; that the details of Invoices shown under GSTR-1 for the month of August-2017 the invoice numbers did not repeated and ITC was passed on to the recipient for all the invoices mentioned in GSTR-1 for the month of August 2017. The tax payer paid tax for all the invoices issued in August-2017. The invoice number mentioned as "14A, 15A, 16A, 17A, 18A, 21A, 22A, 23A, 25A, 26A, 27A, 28A, 29A, 31A, 32A and 33A" in the GSTR-1 for the month of August 2017, however in the GSTR-1 for the month of September 2017 the invoice numbers mentioned as 14, 15, 16, 17, 18, 21, 22, 23, 25, 26, 27, 28, 29, 31, 32 and 33 which is totally different to that of invoices of August-2017;
- The taxpayer has filed GSTR-1 for the month of Sep-2017 showing outward liability of Rs.6,51,530/- and passed on ITC to their respective buyers. However, the tax payer had paid tax through GSTR-3B amounting to Rs.4,46,418/- only in the month of Sep2017 and therefore short paid the tax amounting Rs.2,05,112/-. Contention of the taxpayer that they have made typo error in the month of August-2017 does not holds good as correct way to rectify any mistake in outward supply is by way of filing credit note/debit note prescribed in the Act. The taxpayer has short paid their outward tax liability with a clear intention to evade tax payment because the taxpayer has already passed on Input Tax Credit to their buyers;
- that the taxpayer has made supplies under Invoice No.34 and 38 dated 01.09.2017 and 06.09.2017 respectively having total tax liability of Rs.33,428/- but not declared in their GSTR-IM. The taxpayer has already collected the tax but



not paid to the Government. Further the submission made by the taxpayer that they have already paid the tax liability of Rs.33,428/- in their GSTR 3B of Sep-2017 has no ground as there is already a short payment of Tax amounting Rs.2,05,112/- as discussed in foregoing paras. I find that the taxpayer has deliberately not shown their correct tax liability with an intent to evade tax payment on their outward supply. There is a short payment of tax amounting Rs.33,428/- which is to be demanded and liable to recovered;

- the demand of Short Payment of Tax less paid as per Table 9 of GSTR-9 for Rs. 10,113/- under section 74(1) of the Central Goods and Services Tax Act, 2017 and the corresponding entry of the S(3ST Act, 2017, alongwith interest under the provisions of Sections 50(1) of the Act read with the provisions of Section 20 of the IGST Act. The taxpayer has accepted the liability and paid Rs. 10,113/- along with Interest of Rs. 6,827/- on 16-06-2023 through DRC-03 filed on 16-06-2023 vide ARN AD2406230542096. Therefore, the same is liable to be appropriated against the said demand; that the taxpayer has discharged their tax liability and applicable interest thereon on 16.06.2023, thus failed to discharge the liability within stipulated time period, hence liable for penalty under the provisions of Sections 74(1) of the Act read with the provisions of Section 76(2) and 122(2) (b) of the Act read with the provisions of Section 20 of the IGST Act;

The tax payer has supplied the goods under HSN 7310 and 7210, however they failed to be registered for the said HSN, hence liable for penalty under Section 125 of CGST Act 2017.



4. Being aggrieved with the impugned order, the appellant preferred the present appeal on 20.02.2024 and submitted additional documents for the following reasons:

DIFFERENCE IN ITC AVAILED AND UTILIZED IN GSTR-3B RETURN AND ITC AVAILABLE IN GSTR-2A OF Rs. 8,312/-.

- That the observation made by your honour that the appellant firm has taken excess credit of Rs. 11,232/- is factually incorrect and without verifications of facts and related details available with the department;
- the ITC available as per Table 8A of GSTR-9 filed and ITC availed in GSTR-3B as under: -

Sr. No.	Particulars	Amount (Rs.)
1	ITC AVAILED AS PER GSTR-3B	3440291
2	ITC AVAILABLE AS PER TABLE 8A IN GSTR-9 FILED	3438651
DIFFERENCE BETWEEN ITC AVAILED AND AVAILABLE AS PER GSTR-3B AND TABLE 8A OF GSTR-9 FILED		1640

1	ITC AVAILED AS PER GSTR-3B	3440291
2	ITC AVAILED AS PER TAX LIABILITIES AND ITC COMPARISION SHEET	3438651
DIFFERENCE BETWEEN ITC AVAILED AND AVAILABLE AS PER GSTR-3B AND TAX LIABILITIES & ITC COMPARISION SHEET		1640

- The appellant firm has already reversed and re-paid excess ITC of Rs. 1,640/- along with Interest of Rs. 1,920/- on 16-06-2023 through DRC-03 filed on 16-06-2023 vide ARN AD24062:30541611.
- That in August 2017 being 2nd month of implementation of GST, the system of GSTR-2A was not there and input tax credit to be taken on the basis of invoice only.

SHORT PAYMENT OF DIFFERENTIAL TAX AS DECLARED IN GSTR-1 TO THAT PAID IN GSTR-3B OF Rs. 2,05, 112/-:

- The Ld. A.O. confirmed the Short Payment of GST as declared in GSTR-1 to that paid in GSTR-03 of Rs. 2,05,111.54/- merely on surmises and conjectures;
- That the accountant of the appellant firm has made typographical error and mentioned 16 invoices serially numbered from "14A, 1 5A, 16A,17A,18A,21A,22A, 23A,25A,26A,27A,28A,29A,31A,32A and 33A" of August 2017 in GSTR-1 of September 2017 along with original invoices of September 2017 even though the same has been shown in GSTR-1 of August 2017. The accountant of the appellant firm has shown above mentioned invoices in GSTR-1 of September 2017 even though the same has been shown in GSTR-1 of August 2017 and hence, the appellant has shown same invoice in the month of august and September 2017;

The accountant of the appellant firm has also not shown Two Invoice Serially number 34 dated 01-09-2017 and 38 dated 06-09-2017 having Tax effect of Rs. 16,714.08/- CGST & Rs. 16,714.08 SGST in GSTR-1 but the scone has been duly shown in GSTR-3B and Tax of Rs. 16,714.08/- CGST and Rs. 16,714.08/- SGST has been paid in GSTR-3B filed for the month of Sept 2017. Due to above mentioned, typographical error by the accountant of the appellant firm, Difference between Tax Payable Shown in GSTR- 1 and Tax Paid Shown in GSTR-3B arises; that the appellant firm has made amendment in above wrongly mentioned invoices in GSTR-1 of March 2019 and rectify its mistake. The appellant firm has amended all the invoices in March 20 19 within the statutory time limit prescribed by CBIC and before filing GSTR-9 for the FY 2017-18.

- The appellant firm in its amendment makes Tax payable CGST, SGST and IGST as "0 (ZERO)" in all the mentioned invoices through amendment in GSTR-1 of March 2019. In view of the above mentioned facts, The additional of Short



Payment of tax of Rs. 2,05,112/- under section 74(1) of CGST Act 2017 by the LD. A.O. deserve to be set aside in toto;

- *That the appellant would like to submit the confirmation of seller parties certifying that they have not availed any ITC on the basis of above mentioned typographical error and hence the question of passing the credit to seller parties of appellant does not arise at all.*

DEMAND OF PAYMENT OF TAX OF RS. 33,428/-:

- *The accountant of the appellant firm has also not shown Two Invoice Serially number 34 dated 01-09-2017 and 38 dated 06-09-2017 having Tax effect of Rs. 16,714.08/- CGST & Rs. 16,714.08 SGST in GSTR-1 but the same has been duly shown in GSTR-3B and Tax of Rs. 16,714.08/- CGST and Rs. 16,714.08/- SGST has been paid in GSTR-3B filed for the month of Sept 2017 and hence, the question of short payment of tax does not arise. In view of the above-mentioned facts, the addition of payment of tax of Rs. 33,428/ - under section 74(1) of CGST Act 2017 by the LD. A.O. deserve to be deleted in toto.*

Appellant requested to quash and set aside the impugned order.



Virtual Hearing :

Virtual hearing in the appeal was fixed/held on 21.03.2024 and 09.04.2024. Shri Gaurav S. Vyas, CA, Shri Mukesh S. OD, CA and Mr. Jaydeep Bhai Garala, Partner appeared in person on behalf of the appellant in the present appeal. During Virtual hearing they submitted that:

(i). In the month of August 2017, all tax dues have been paid and invoices have been again uploaded in September as HSN code was not mentioned on invoices. Tax has been paid correctly. This mistake has been rectified in Annual GSTR-9 returns and GSTR-1 also amended in GSTR-1 in March 2019. Therefore, since no supply was made on invoices mentioned/uploaded two times, no payment received and no ITC was availed. Certificate to this effect has been sent via email dated 09.04.2024 alongwith additional submissions. He further reiterated the written submissions and requested to allow appeal.

(ii). The Audit officers point out different of ITC in GSTR-2A and 3B is Rs. 11,232/- but on re-verification the different is only of Rs. 2,920/- which has been paid alongwith interest. DRC-03 is submitted with additional submissions.

(iii). In respect of invoice no. 34 and 38 of September 2017, tax liability discharged by could not be uploaded in GSTR-1 due to mistake of accountant. Since no revenue loss therefore appeal may be allowed.

He reiterated the written submission and requested to allow appeal.

DISCUSSION AND FINDINGS:

6. I have gone through the facts of the case, written submission and additional submission made by the 'appellant'. The adjudicating authority passed the impugned order and confirm the demand of wrongly availed and utilized ITC due to difference in GSTR-3B return and ITC available in GSTR-2A for the periods from July 2017 to March 2018 amounting to Rs. 11,232/- in August 2017 alongwith interest and penalty. The adjudicating authority vide impugned order drop the demand of Rs. 2,920/-. Out of total ineligible ITC of Rs. 8,312/- (Rs. 11,232/- minus Rs. 2,920/-), appellant paid ITC of Rs. 1,640 alongwith interest but not agree to pay remaining ITC Rs. 6,672/- (Rs. 8,312/- minus Rs. 1,640/-) alongwith interest and penalty, Short Payment of differential Tax as declared in GSTR- 1 to that paid in GSTR-3B amounting to Rs. 2,05,112/- in September 2017 alongwith interest and penalty, Invoice No. 34 & 38 mentioned in GSTR-3 of Sep 2017 but not mentioned in GSTR-1 of Sep 2017 amounting to Rs. 33,428/- (CGST Rs. 16,714/- and SGST Rs. 16,714/-) alongwith interest and penalty, Short payment of tax amounting to Rs. 10,113/- in GSTR-9 for the period 2017-18. Tax and interest already paid but not agreed to pay penalty of Rs. 10113/- under Section 74(1) of the CGST Act 2017 and penalty of Rs. 10,000/- under Section 125 of the CGST Act 2017 for supply of goods under HSN 72 and 73 under which he was not registered in 2017-18.



7(i). In respect of issue mentioned at para 2(i) the adjudicating authority contended that the appellant has availed excess ITC of Rs. 8,312/- in GSTR 3B returns of what available in GSTR-2A. Out of total ineligible ITC of Rs. 8,312/- (Rs. 11,232/- minus Rs. 2,920/-), appellant paid ITC of Rs. 1,640 alongwith interest. In this regard appellant stated that difference of ITC availed between GSTR 9 and GSTR-3B is Rs. 1640/- only. However, contention of the appellant that there is a difference between GSTR 3B and GSTR 9 of Rs. 1,640/- does not hold ground as GSTR 9 is merely an statement and does not have any impact on credit ledger or outward/inward liabilities. In the instant case appellant failed to provide any documentary evidence regarding the eligibility to avail excess Input Tax Credit of Rs. 8,312/- as per the provisions of Section 16(2) of the CGST Act, 2017. In view of the above, I find that the appellant has contravened the


provision of 16 of the Act, *ibid*, read with rule 36 of the CGST Rules, 2017 as they have wrongly availed the ITC in excess to what was available to them.

7(ii). Further in the instant case the appellant had the option to avail 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. However it is observed that the appellant had failed to produce documents to the department to justify that the ITC claimed by them of Rs. 8,312/- in respect of difference between GSTR-2A and GSTR-3B is legal and proper. 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. In view of the above it is observed that the appellant ineligible ITC to the tune of Rs.8,312/- and is liable to pay under the provisions of Section 74(1) of the CGST Act, 2017 corresponding entry of SGST Act, 2017 read with Section 20 of the IGST Act, 2017 along with applicable interest under Section 50 of the CGST Act, 2017 and Penalty under Section 74 of the CGST Act, 2017.



In respect of issue mentioned at para 2(ii), the adjudicating authority contended that the appellant had made short payment in Tax Liability as per GSTR-1 & GSTR-3B returns for the period from July-2017 to March 2018. The tax liability in September 2017 as declared in GSTR-1 is Rs 6,51,530/- but payment under GSTR-3B is Rs. 4,46,418/-. There is short payment of tax in GSTR-3B to the tune of Rs. 2,05,112/- in September 2017. In this regard the appellant contended that at the time of filing GSTR-1 of August 2017, accountant of the appellant firm has made typographical error and mentioned 16 invoices serially numbered from "14A, 15A, 16A, 17A, 18A, 21A, 22A, 23A, 25A, 26A, 27A, 28A, 29A, 31A, 32A and 33A" of August 2017 in GSTR-1 of September 2017 along with original invoices of September 2017 even though the same has been shown in GSTR-1 of August 2017. The accountant of the appellant firm has shown above mentioned invoices in GSTR-1 of September 2017 even though the same has been shown in GSTR-1 of August 2017 and hence, the appellant has shown same invoice in the month of August and September 2017. The appellant further stated that they has made amendment in above wrongly mentioned invoices in GSTR-1 of March 2019 and rectify its mistake. The assessee firm in its amendment makes Tax payable CGST, SC3ST and IGST as "0 (ZERO)" in all the mentioned invoices through amendment in GSTR-1 of March 2019. The taxpayer has rectify the mistake and hence, the question of Short Payment of Tax for Rs. 2,05,112/- does not arise.

8(ii). On going through the facts of the impugned order and the submissions made by the appellant, it is found that the details of Invoices shown under GSTR-1 for the month of August-2017 the invoice numbers found repeated, as the value and tax amount of all the invoices are matched with the details of Invoices shown under GSTR-1 for the month of August-2017 and September 2017. It appears that due to typographical error mentioned 16 invoices serially numbered from "14A, 15A, 16A,17A,18A,21A,22A,23A,25A,26A,27A,28A,29A,31A,32A and 33A" of August 2017 in GSTR- of September 2017 along with original invoices of September 2017 even though the same has been shown in GSTR-1 of August 2017. Further it appears that some invoices had been issued under alpha- numerical numbers (with suffix "A") whereas other invoices were issued under only numbers. The accountant of the appellant firm has shown above mentioned invoices in GSTR-1 of September 2017 even though the same has been shown in GSTR-1 of August 2017 and hence, the appellant has shown same invoice in the month of august and September 2017. In the instant case the adjudicating authority contended that the ITC was passed on to the recipient for all the invoices mentioned in GSTR-1 for the month of August 2017. In this regard it has been found that the appellant has submitted the confirmation of seller parties certifying that they have not availed any ITC on the basis of above mentioned typographical error and hence the question of passing the credit to seller parties of appellant does not arise at all.



8(iii). Further it is observed that the appellant has made amendment in above wrongly mentioned invoices in GSTR-1 of March 2019 and rectify its mistake. The appellant firm has amended all the invoices in March 2019 within the statutory time limit prescribed by CBIC and before filing GSTR-9 for the FY 2017-18. The appellant firm in its amendment makes Tax payable CGST, SGST and IGST as "0 (ZERO)" in all the mentioned invoices through amendment in GSTR-1 of March 2019. In view of the above the liability for payment of short paid tax for Rs. 2,05,112/- does not arise.

9. In respect of issue mentioned at para 2(iii), the adjudicating authority confirm the demand of Rs. 33,428/- (CGST Rs. 16,714/- and SGST Rs. 16,714/-) due to invoice no. 34 & 38 mentioned in GSTR-3 of Sep 2017 but not mentioned in GSTR-1 of Sep 2017 which is liable to recovered under the provisions of section 74(1) of the Central goods and Services Tax Act, 2017 and the corresponding entry of the SGST Act, 2017 alongwith interest under the provisions of Sections 50(1) of the Act read with the provisions of Section 20 of the IGST Act along with applicable penalty. In this regard it is observed that the appellant has made payment in respect of invoice no. 34 & 38 in GSTR-3B but fail to disclosed in GSTR-1, hence I

find that there is no revenue loss to the government. In view of the above I find that there is no short payment of tax amounting Rs.33,428/- which is to be demanded and liable to recovered.

10(i). In respect of issue mentioned at para 2(iv), it is observed from table 9 of GSTR-9 for the period 2017-18, that the tax payable for the Financial year was declared to be Rs. 31,69,152/- but payment was made Rs. 31,59,039/-. Hence, appellant short paid Rs. 10,113/-. The adjudicating authority confirms the demand for Short payment of tax amounting to Rs. 10,113/-in GSTR-9 for the period 2017-18 under section 74(1) of the Central Goods and Services Tax Act, 2017 and the corresponding entry of the SGST Act, 2017, alongwith interest under the provisions of Sections 50(1) of the Act read with the provisions of Section 20 of the IOST Act. Further it is observed that the appellant has accepted the liability and paid Rs. 10,113/- along with Interest of Rs. 6,827/- on 16-06-2023 through DRC-03 filed on 16-06-2023 vide ARN AD2406230542096. Therefore, the same is liable to be appropriated against the said demand. But not agreed to pay penalty of Rs. 10,113/- under Section 74(1) of the CGST Act 2017

10(ii). In the instant case, it is observed that the appellant has made Short Payment of Tax as per Table 9 of GSTR-9 for Rs. 10,113/-. The appellant has discharged their tax liability and applicable interest thereon on 16.06.2023, thus failed to discharge the liability within stipulated time period, hence liable for penalty under the provisions of Sections 74(1) of the Act read with the provisions of Section and 122(2)(b) of the Act read with the provisions of Section 20 of the IGST Act.

11(i). From the registration of the appellant, it is found that they are registered for supply of goods under HSN 83099030, 44151000, 83099030, 44151000 83099030. But, from GSTR -1 for the period from July 2017 to March 2018, it is found that the appellant had supplied goods under HSN 7310 and 7210 – Empty Tins / Scrap, under which he is not registered. And in the month of March 2018, they did not mention any HSN for supply of goods. As they are not registered under HSN 7310 and 7210, but they have supplied goods under these HSN, therefore they are liable to penalty.

11(ii). In view of the above I refer Section 125 of CGST Act 2017 reads as under:

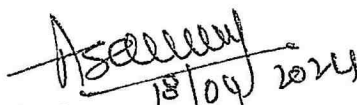
Section 125.

General penalty: Any person, who contravenes any of the provisions of this Act or any rules made thereunder for which no penalty is separately provided for in this Act, shall be liable to a penalty which may extend to twenty-five thousand rupees.

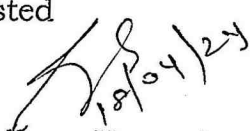
In the instant case it is observed that the appellant has supplied goods under HSN 7310 and 7210 however they are not registered for the same HSN, hence they are liable for penalty under Section 125 of CGST Act 2017.

12. In view of the above discussions (i) I uphold the demand of wrongly availed and utilized ITC amounting to Rs. 8,312/- alongwith interest and penalty. (ii) uphold the penalty of Rs. 10,113/- under Section 74(1) of the CGST Act 2017 for short payment of tax. (iii) uphold the penalty of Rs. 10,000/- under Section 125 of the CGST Act 2017 for supply of goods under HSN 72 and 73 under which he was not registered in 2017-18. (iv) Drop the demand for Short Payment of Tax amounting to Rs. 2,05,112/- under Section 74(1) of the CGST Act 2017 alongwith interest and penalty and Short payment of tax of Rs. 33,428/- alongwith interest and penalty. The impugned order in original is modified to above extent.

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: 18.04.2024

Attested


(Sandheer Kumar)
Superintendent (Appeals)

By R.P.A.D.

To

M/s. Mayur Packaging,
Survey No. 142 Paiki 2, Gokuldham Industrial Estate,
Godown No. 22,23,24,25,26 Irana Road,
Budasan Kadi, Mehsana, Gujarat-382715.

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- Palanpur, Gandhinagar Commissionerate.
6. The Superintendent, CGST & C.Ex, Range-I, Division- Kadi, Gandhinagar Commissionerate.
7. The Superintendent (Systems), CGST Appeals, Ahmedabad.
8. Guard File/P.A. File.

