



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

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DIN- 20240564SW00006126BD

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या File No : GAPPL/ADC/GSTP/2280/2024-APPEAL | ८२४४ - ४५

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-003-APP-JC- 09 /2024-25**

दिनांक Date : **09.05.2024** जारी करने की तारीख Date of Issue : 09.05.2024

श्री आदेश कुमार जैन संयुक्त आयुक्त (अपील) द्वारा पारित

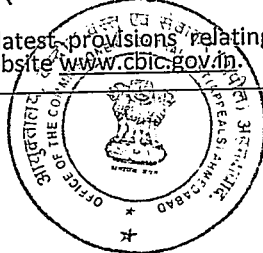
Passed by Shri Adesh Kumar Jain, Joint Commissioner (Appeals)

ग Arising out of Order-in-Original No. PLN-SUPDT-GST-11/2023-24 dated 06.12.2023 (Form GST DRC-07 reference no. ZD2412230463080 dated 18.12.2023) issued by the Superintendent, CGST Range-I (Palanpur), Division- Palanpur, Gandhinagar Commissionerate.

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

Appellant	Respondent
M/s National Drug Centre (Legal Name: Vasudev Radhakishan Maheshwari), 0, Pharma Chembar, Shivaji Market, Amir Road, Palanpur, Banaskantha, Gujarat, 385001	The Superintendent, CGST Range-I (Palanpur), Division- Palanpur, Gandhinagar Commissionerate

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



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

M/s National Drug Centre(Legal Name: Vasudev Radhakishan Maheshwari), 0, Pharma Chember, Shivaji Market, Amir Road, Palanpur, Banaskantha, Gujarat-385001 (hereinafter referred to as the "appellant") has filed the appeal on 06.03.2024 against Order No. ZD2412230463080, dated 18.12.2023 (Order-in-Original No. PLN-SUPDT-GST-11/2023-24, dated 06.12.2023 (hereinafter referred to as the "impugned order") passed by the Superintendent, Central GST & C.Ex., Range-1, Division- Palanpur, 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 24AGPPM2430H1ZI. The appellant availed Input Tax Credit of Rs. 9,06,105/- (IGST Rs. 10,431/-, CGST Rs. 4,47,837/- and SGST Rs. 4,47,837/-) for the period from July, 2017 to March, 2018 after due date for availing the same. The details of such ineligible credit are as below:

Sr. No.	Month/Quarter	Date of filing of GSTR-3B	Last date for availing credit for FY	Total ITC availed after the time limit prescribed under Section 16(4)	IGST	CGST	SGST/UTGST
1	Oct-17	8-Feb-2020	23-Apr-19	1,39,832	0	69,916	69,916
	Nov-17	13-Feb-2020	23-Apr-19	1,63,996	0	81,998	81,998
	Dec-17	13-Feb-2020	23-Apr-19	1,58,740	10,430	74,155	74,155
	Jan-18	13-Jun-2020	23-Apr-19	1,65,751	0	82,875	82,875
5	Feb-18	17-Jun-2020	23-Apr-19	1,59,509	0	79,754	79,754
6	Mar-18	2-Jul-2020	23-Apr-19	1,18,273	0	59,136	59,136

2(ii). In view of the above, a Show Cause Notice was issued to the appellant on dated 29.09.2023. Further, the adjudicating authority passed the impugned order dated 06.12.2023 and

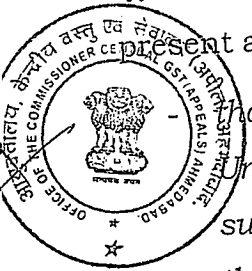
- (i) Confirm the demand of ineligible Input Tax Credit amounting to Rs. 9,06,105/- (IGST Rs. 10,431/-, CGST Rs. 4,47,837/- and SGST Rs. 4,47,837/-) availed and utilized for F. Y 20 17- 18 under the provisions of Section 73(1) of the CGST/SGST Act, 2017;
- (ii) Confirm the demand of interest at the appropriate rate on the confirmed demand of Rs. 9,06,105/- under the provisions of Section 50(3) of the CGSTSGST Act, 2017;
- (iii) Confirm penalty of Rs. 90,611/- under Section 73(1) of the CGST/SGST Act, 2017 and do not impose any penalty under the provisions of Section 122(2) (a) of the Act, as discussed above

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

- that the ITC available during the months of Oct-17, Nov-17, Dec-17, Jan-18, Feb-18 and Mar,18 were availed by the noticee after the due date prescribed under Section 16(4) of the CGST Act 2017. This factual allegation has also not been challenged by the noticee;
- that the subject amount of ITC was availed after lapse of statutory period. The noticee has not submitted anything substantial evidence to justify availability of subject ITC which has been claimed and availed after lapse of due date provided by law;
- that the language of Section 16(4) of the CGST Act, 2017 and Section 16(4) of the Gujarat GST Act, 2017 is very clear and unambiguous. The provision clearly provides for time limits for availing ITC. This provision has been subjected to judicial analysis in the above discussed matters before different Hon'ble High Courts and it has been held that the provision is constitutionally valid and is not merely procedural;
- that Section 73(1) of the Act provides for demand of tax with interest and with imposition of penalty. It does not contain quantum of penalty but the same has been mentioned in Section 73(9) ibid which provides that proper officer shall determine the amount of tax, interest and a penalty equivalent to ten per cent. of tax or ten thousand rupees whichever is higher, due from such person.

4.

Being aggrieved with the impugned order, the appellant preferred the



present appeal on 06.03.2024 for the following reasons:

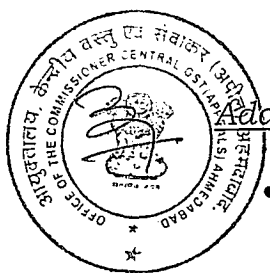
- that as per Gujarat High Court Judgement Order in case of *Allyssum Infra Vs Union of India* Special Civil Application No. 23556 of 2022, when it was submitted by petitioner that retrospective cancellation of the GST registration of the petitioners may come in its way for claiming Input Tax Credit for the period from the date of cancellation till the date of revocation of the registration; on which High Court Categorically stated that "6.1 in this regard it is observed that when the competent authority considers the issue of revocation of cancellation of petitioners' GST registration under the aforesaid notification, the petitioners shall be entitled to lodge its claim for availment of Input Tax Credit in respect of the period from the cancellation of the registration till the registration is restored. So considering above Gujarat High Court, case also falls under the criteria of Entitlement of claiming availment of Input tax credit in respect of the period from Cancellation of the Registration till registration is restored. Our 'GST was cancelled. So we will be entitled to take Input Tax Credit. On basis of above Gujarat High Court Judgement, we are entitled to take ITC as claimed in GSTR 3B;
- that it was not possible to Claim ITC under GSTR-2 as per then notified Section 16(4) as GSTR-2 was never notified. Also GSTR-3 was also not notified during

the period into consideration. We would like to submit GSTR -3B cannot be treated as a return under section 39 thereby considering the delay in filing of GSTR-3B to deny the ITC is not correct;

- that Section 16 of CGST Act, 2017 provides the eligibility and conditions for taking the input tax credit;
- Section 16(1), Section 16(4) and Section 41 of the Act, Taking of Input Tax Credit and Availing Input Tax Credit are two separate Event. "Taking of Input Tax Credit" meaning taking credit in Books of Accounts. As Section 16(4) talks about Taking of Input Tax Credit and Not about availment of Input Tax Credit, the time limit mentioned in Section 16(4) is only related to Taking of Input Tax Credit in Books of Accounts. As we have taken Input Tax Credit in books of Accounts within the Time limit of Section 16(4), Ineligibility of Input Tax Credit as mentioned in Notice is not tenable and such is not recoverable. Time line restriction mentioned in Section 16(4) does not come in way of delayed Filing of GSTR 3B in which is self assessed;
- that Taking Input Tax Credit happens in Books of Accounts and Availment of Credit happens while filing GSTR 3B. As contented by the Leaned officer in SCN about the time limit of Section 16(4) only, the section 16(4) talks about Taking of Input Tax Credit, and We have taken Input Tax Credit in books of accounts well within the time limit mentioned in Section 16(4);

Additional Submission:

- that we were not able to file the GST returns for the period into consideration as there was lack of funds due to financial instability. As portal does not allow to file GSTR 3B until challans are paid, we could not file GSTR 3B due to lack of funds due to financial instability. Our GSTN was cancelled for non filing of GST returns, when we applied for revocation of cancellation of GSTN, no such intimation or objection was raised for limitation of Section 16(4);
- If we were allowed to filed GSTR 3B without payment of Tax where such credit is availed, same would have been availed such credit already. Reference as per recent Madras High Court Judgement in the case of Kavin HP Gas Gramin Vitrak v. The Commissioner of Commercial Taxes & Ors, it was held that basis of initiation of the proceedings by the department is itself not legally t:enable, as when FORM GSTR-2 is not available, then electronica1 filing is not possible, as for claiming ITC as per the Act, facility of GSTR-2 is not provided till now. The Taxpayer cannot be expected to ale the Form electronically "if the GSTN provided an option for filing GSTN without payment of tax or incomplete FORM GSTR-3B, the dealer would be eligible for claiming of ITC. The same was not provided in GSTN network hence, the dealers are restricted to claim ITC on the ground of non-filing of FORM GSTR-3B within prescribed time." it was not possible to Claim ITC under GSTR-2 as per then notified Section 16(4) as



GSTR2 was never notified. Also GSTR-3 was also not notified during the period into consideration;

- As it is established and accepted by learned officer; fact that all conditions are fulfilled, we are entitled to the credit of input tax. We have availed such Input Tax credit in our books of accounts maintained as per section 35 (1) read with Rule 56 of the act;
- The section 16(4) is based on principle of limitation where on time period lapse the fresh entitlement is not available. So fresh entitlement would not be available if vesting conditions as mentioned in section 16(2) would have not be fulfilled upto time limit as specified in section 16(4). This means that the vesting entitlement already received after fulfilling conditions as specified in section 16(2) does not go away as per section 16(4). Section 16(4) restricts only fresh entitlement of input tax credit;
- That various SLP has already been filed in Hon'ble Supreme Court, as it is sub judice, we would humbly request learned officer to take action only after such order is being passed by SC.

In view of the above, the impugned order is not sustainable and liable to be set aside in the interest of justice.

VIRTUAL HEARING :

5. Virtual hearing in the present appeal was held on 06.05.2024. Shri Harsh Piyushbhai Vakil, C.A. and Shri Piyush L. Vakil, Advocate, Authorized Representatives appeared on behalf of the appellant in the present appeal. During hearing they have reiterated the written submission. It is submitted that ll the conditions of Section 16(2) are fulfilled, therefore credit can't be denied. Additional submissions will be sent on email alongwith P.H. memo. In view of above requested to allow appeal.

DISCUSSION AND FINDINGS:

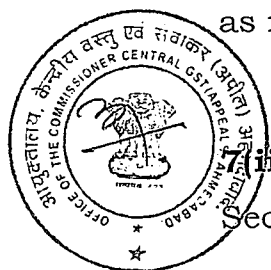
6. I have gone through the facts of the case, written and additional submissions made by the 'appellant'. It is observed that the main issue to be decided in the instant case is whether the appellant has wrongly availment of Input Tax Credit (ITC) amounting to Rs. 9,06,105/- (IGST Rs. 10,431/-, CGST Rs. 4,47,837/- and SGST Rs. 4,47,837/-) as per Section 16(4) of the CGST Act 2017 and is liable to pay tax under Section 73(1) of the CGST Act 2017 alongwith interest under Section 50(3) of CGST Act 2017 and penalty under Section 73(1) of the CGST Act 2017.

7(i). In the instant case, the appellant has availed ITC to the tune of Rs. 9,06,105/- (IGST Rs. 10,431/-, CGST Rs. 4,47,837/- and SGST Rs. 4,47,837/-) for the return period from July 2017 to March 2018 in

contravention to the provisions of Section 16(4) of the CGST Act, 2017. The appellant availed Input Tax Credit after due date for availing the same. The details of such ineligible credit are as below:

Sr. No.	Month/Quarter	Date of filing of GSTR-3B	Last date for availing credit for FY	Total ITC availed after the time limit prescribed under Section 16(4)	IGST	CGST	SGST/UTGST
A	B	C	D	E	F	G	H
1	Oct-17	8-Feb-2020	23-Apr-19	1,39,832	0	69,916	69,916
2	Nov-17	13-Feb-2020	23-Apr-19	1,63,996	0	81,998	81,998
3	Dec-17	13-Feb-2020	23-Apr-19	1,58,740	10,430	74,155	74,155
4	Jan-18	13-Jun-2020	23-Apr-19	1,65,751	0	82,875	82,875
5	Feb-18	17-Jun-2020	23-Apr-19	1,59,509	0	79,754	79,754
6	Mar-18	2-Jul-2020	23-Apr-19	1,18,273	0	59,136	59,136

The last date of filing of GSTR-3B returns from July 2017 to March 2018 was 23.04.2019 (as extended) and the last date for filing 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 23.04.2019. However in the instant case the appellant has filed their GSTR 3B returns for the return period from July 2017 to March 2018 as per column D of the table as mentioned above and availed ITC.



(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 [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 nonresident 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(i). In this regard the appellant contended that that as per Gujarat High Court Judgment Order in case of Allyssum Infra Vs Union of India Special Civil Application No. 23556 of 2022, when it was submitted by petitioner that retrospective cancellation of the GST registration of the petitioners may come in its way for claiming Input Tax Credit for the period from the date of cancellation till the date of revocation of the registration; on which High Court Categorically stated that "6.1 in this regard it is observed that when the competent authority considers the issue of revocation of cancellation of petitioners' GST registration under the aforesaid notification, the petitioners shall be entitled to lodge its claim for availment of Input Tax Credit in respect of the period from the cancellation of the registration till the registration is restored. So considering above Gujarat High Court, case also falls under the criteria of Entitlement of claiming availment of Input tax credit in respect of the period from Cancellation of the Registration till registration is restored.

8(ii). In view of the above, it is found that the issue of admissibility of ITC under section 16(4) of CGST Act, 2017 has been settled in legal Forum as per the judgement of Patna High Court Civil Writ Judicature Court (CWJC) Case No. 9108 of 2021 dt.08-09-2023 and as per Judgement of Andhra Pradesh High Court Writ Petition (WP) Case No. 24235 of 2022 dt. 18.07.2023. Further Section 16(4) of the CGST/SGST Act, 2017 is very clear and unambiguous. The provision clearly provides for time limits for availing ITC. This provision has been subjected to judicial analysis in the above discussed matters before different Hon'ble High Courts and it has been held that the provision is constitutionally valid and is not merely procedural.

9. 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 sunder 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 Commissioner of Commercial Taxes and Ors. 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, I find that the appellant has wrongly availed ITC to the tune of Rs. 9,06,105/- (IGST Rs. 10,431/-, CGST Rs. 4,47,837/- and SGST Rs. 4,47,837/-) 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.

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.

(Signature)
09/05/2024

(Adesh Kumar Jain)

Joint Commissioner (Appeals)

Date: 09.05.2024

Attested

(Signature)
09/05/24
(Sandheer Kumar)
Superintendent (Appeals)

By R.P.A.D.

To

M/s National Drug Centre,
(Legal Name: Vasudev Radhakishan Maheshwari),
0, Pharma Chamber, Shivaji Market, Amir Road,
Palanpur, Banaskantha, Gujarat-385001.

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-Palanpur, Gandhinagar Commissionerate.
5. The Dy. / Assistant Commissioner (RRA), CGST & C.Ex, Gandhinagar Commissionerate.
6. The Supdt., CGST & C.Ex, Range-I, Division- Palanpur, Gandhinagar Commissionerate.
7. The Supdt.(Systems), CGST Appeals, Ahmedabad.
8. Guard File
9. P.A. File.

