



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- 20240564SW00006606DC**

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या File No : GAPPL/ADC/GSTP/2190/2024 -APPEAL / 5000 - 17

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-003-APP-JC- 11 /2024-25**

दिनांक Date : **10.05.2024** जारी करने की तारीख Date of Issue : 14.05.2024

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-DEESA-SUPDT-GST-23/2023-24 dated 07.03.2024 (Form GST DRC-07 ref no. ZD240324017787C dated 08.03.2024) issued by the Superintendent, CGST Range- Palanpur-III, Division- Palanpur, Gandhinagar Commissionerate

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

Appellant	Respondent
M/s Shivam Electronics (Legal Name: Tejashkumar Natwarlal Soni), 0, Anmol Complex, Main Bajar. Tharad, Banaskantha. Gujarat, 385565	The Superintendent, CGST Range- Palanpur-III, 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) <b>Full amount of Tax, Interest, Fine, Fee and Penalty</b> arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to <b>twenty five per cent</b> 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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> 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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> .



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

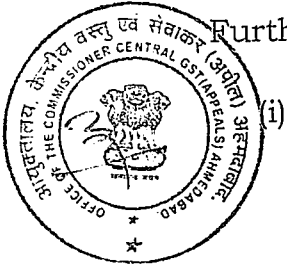
M/s Shivam Electronics (Legal Name: Tejashkumar Natwarlal Soni), O, Anmol Complex, Main Bajar, Tharad, Banaskantha, Gujarat-385565 (hereinafter referred to as the "appellant") has filed the appeal on 26.03.2024 against Order No. ZD240324017787C, dated 08.03.2024 (Order-in-Original No. PLN-SUPDT-GST-23/2023-24, dated 07.03.2024) (hereinafter referred to as the "impugned order") passed by the Superintendent, Central GST & C.Ex., Range- Palanpur III (Deesā), 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 24ASLPS3482M2Z1. The appellant availed Input Tax Credit of Rs. 23,514/- (CGST Rs. 11,757/- and SGST Rs. 11,757/-) for the period from April 2018 to March, 2019 after due date for availing the same. The details of such ineligible credit is 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 prescribed under Section 16(4)	CGST	SGST/UT GST
1	March	20-Sep-2021	20-Oct-19	23,514	11,757	11,757

**2(ii).** In view of the above, a Show Cause Notice was issued to the appellant.

Further, the adjudicating authority passed the impugned order and



- (i) Confirm the demand of ineligible Input Tax Credit amounting to Rs. 23,514/- (CGST Rs. 11,757/- and SGST Rs. 11,757/-) availed and utilized for F. Y 2018-19 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. 23,514/- (CGST Rs. 11,757/- and SGST Rs. 11,757/-) under the provisions of Section 50(3) of the CGST/SGST Act, 2017;
- (iii) Confirm penalty of Rs. 10,000/- under Section 73(1) of the CGST Act, 2017 and penalty of Rs. 10,000/- under Section 73(1) of the SGST Act, 2017 and refrain from imposing 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:

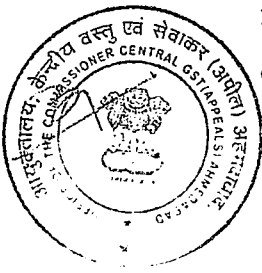
- that the notice has availed the ITC after due date of filing GSTR-3B returns;
- that in the matter of *Nelco Limited Versus Union of India*, reported at 2020 (36) G.S.T.L. 24 (Bom.), the Hon'ble High Court of Judicature at Bombay

has held that ITC is a concession which is required to be availed of within the prescribed time, failing which it would lapse;

- that the judgement of Andhra Pradesh High Court Writ petition (WP) case no. 24235 of 2022 dated 18.07.2023 wherein the present issue was considered by the Hon'ble High Court and it was held that the time limit prescribed for claiming ITC under Section 16(4) of the Act is not violative of Article 14, 19(1)(g) and 300-A of the Constitution of India.

4. Being aggrieved with the impugned order, the appellant preferred the present appeal on 23.03.2024 and request to set aside the order on the following reasons:

- The assessee has been claimed ITC of 23,514 (SGST Rs. 11,757 + CGST Rs. 11,757) in the GSTR-3B March-2019. The ITC has not matched with GSTR-2A For the period March - 2019. Reason of an accountant made mistake for claimed ITC from GSTR-3B March-2019 filing dt.20-09-2021.Thus ITC not matched with GSTR-3B and GSTR-2A for period in March-2019;
- That our accountant made a mistake they couldn't file the GSTR -3B returns for period March-2019 within the stipulated time limit. I was issued Show cause 16.01.2020 and GST number cancel. But Unfortunately we don't respond within the prescribed time limit, our GST registration dt.10/02/2020 in cancel. Sir, I have accepting my human mistake for not reply all notice in within time limit with proper method. Reason for I could not understanding, the GST e- proceeding a proper. Now I have hired a GST consultant, and I will abide by the GST Act as per their guidelines. Sir, as the mistake made above, therein not work my malafide intention for any tax evasion. Kindly accept my explain for the appeal ground Hence I will pending GSTR-3B returns for March-2019 were filed on dt 20/09/2021. In the above filed return we have also filled the ITC not claimed and payable tax due in our GSTR-02A;
- That the assessee has submitted documentary evidences for the GST ITC matter as like , 1) Goods Purchase Bill , 2) Payment history of the purchased goods regarding Bank Statement , 3) Good Purchase register , 4) March-2019 GSTR-2A , 5) March 2019 GSTR-3B online;
- Thus The ITC claimed by us is due to us, as we have paid the GST tax to the supplier along with the replacement of the goods purchased. And all the supplier's ITC is live. Hence as per your notice We do not need to reverse such ITC and do not have to pay any recurring tax on it.



**PERSONAL HEARING :**

5. Personal hearing in the present appeal was fixed/held on 25.04.2024 and 06.05.2024. Shri Ankit V. Modi, Advocate, Authorized Representative appeared on behalf of the appellant in the present appeal. During hearing he submitted that they have complied as per Circular No. 183. They further submitted that their supplier could not file return so their registration cancelled not it is revoked. They have submitted certificate of their supplier. Further reiterated the written submission. Since they complied all provisions their appeal may be allowed.

**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 availed of Input Tax Credit (ITC) amounting to Rs. 23,514/- (CGST Rs. 11,757/- and SGST Rs. 11,757/-) 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. 23,514/- (CGST Rs. 11,757/- and SGST Rs. 11,757/-) for the return period from April 2018 to March 2019 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:

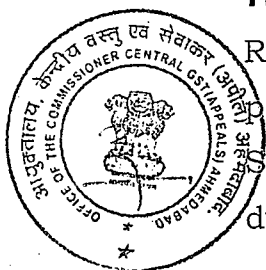
Sr. No.	Month/Quarter	Date of filing of GSTR-3B	Last date for availing credit for FY	Total ITC availed after the time limit prescribed under Section 16(4)	CGST	SGST/UT GST
1	March	20-Sep-2021	20-Oct-19	23,514	11,757	11,757

The last date of filing of GSTR-3B returns from April 2018 to March 2019 was 20.10.2019 and the last date for filing Annual return for the financial year 2018-19 was 30.12.2020. Accordingly, the appellant was eligible to avail the ITC for the financial year 2018-19 in their GSTR 3B return upto 20.10.2019. However in the instant case the appellant has filed their GSTR 3B returns for the return period from April 2018 to March 2019 after 20.10.2019 and availed ITC, which is ineligible under Section 16(4) of the CGST Act, 2017.

7(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."

In this regard the appellant contended that due to accountant's mistake they couldn't file the GSTR-3B returns for period March-2019 within the stipulated time limit. 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.

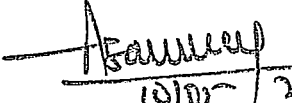
9. As per the provisions of Section 16(4) and Section 39(1) of the CGST Act, 2017 it is very much clear that the appellant shall not be entitled to taken the ITC in respect of any invoice or debit note for the supply of goods or services or both after the due date of furnishing of the return sunder Section 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. Hence, I find that the appellant has wrongly availed ITC to the tune of Rs. 23,514/- (CGST Rs. 11,757/- and SGST Rs. 11,757/-) for the return period from April 2018 to March 2019 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 of Rs. 10,000/- under Section 73(1) of the CGST Act, 2017 and penalty of Rs. 10,000/- under Section 73(1) of the SGST 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।

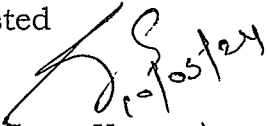
The appeal filed by the appellant stands disposed of in above terms.

  
(Adesh Kumar Jain)

Joint Commissioner (Appeals)

Date: 10.05.2024

Attested

  
(Sandheer Kumar)  
Superintendent (Appeals)

By R.P.A.D.

To

M/s Shivam Electronics  
(Legal Name: Tejashkumar Natwarlal Soni),  
0, Anmol Complex, Main Bajar, Tharad,  
Banaskantha, Gujarat-385565.

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-Palanpur III (Deesa), Division- Palanpur, Gandhinagar Commissionerate.
7. The Supdt.(Systems), CGST Appeals, Ahmedabad.
8. Guard File
9. P.A. File.

