



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

07926305065-

टेलीफैक्स 07926305136



DIN- 20240564SW000016931A

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या File No : GAPPL/ADC/GSTP/2191/2024 -APPEAL | 5593 - 5600

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-003-APP-JC- 12 /2024-25**

दिनांक Date : **15.05.2024** जारी करने की तारीख Date of Issue : 16.05.2024

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. 02/SUPDT/GNR-AR-2/2023-24 dated 29.12.2023
 (Form GST DRC-07 no. 3CEEWU0102S122300067 dated 29.12.2023) issued by The
 Superintendent, CGST Range-II, Division- Gandhinagar, Gandhinagar Commissionerate

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

Appellant	Respondent
M/s Palav Enterprise (Legal Name: Shreyans Shah), 2/10, Sector-29, Akshardeep Complex, Nr-GH-6, Gandhinagar, Gujarat-382030	The Superintendent, CGST Range-II, Division- Gandhinagar, 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 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 .

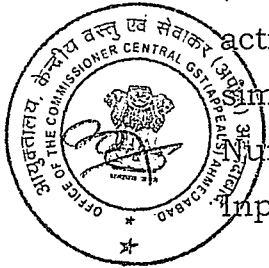


ORDER-IN-APPEAL

BRIEF FACTS OF THE CASE:

M/s. Palav Enterprise (Legal Name: Shreyans Shah), 2/10, Sector-29, Akshardeep Complex, Nr. GH-6, Gandhinagar, Gujarat-382030, (hereinafter referred to as the "appellant") has filed the appeal on 11.03.2024 against Order-in-Original No. 3CEEWU0102S122300067 (02/SUPDT/GNR-AR-2/2023-24), dated 29.12.2023 (hereinafter referred to as the "impugned order") passed by the Superintendent, Central GST & C.Ex., Range-II, Division- Gandhinagar, Gandhinagar Commissionerate (hereinafter referred to as the "adjudicating authority").

2(i). Brief facts of the case in the present appeal is that the appellant are engaged in the activity of supply of goods of HSN 8517 (Telephone Sets, Including Telephones For Cellular Networks or for other Wireless Networks; Other Apparatus for the transmission Or Reception Of Voice, Images Or Other Data, Including Apparatus For Communication in A Wired Or Wireless network (Such As A Local or wide area Network), HSN 995412 (Construction services of other residential buildings such as old age homes, homeless shelters, hostels etc) & HSN 995413 (Construction services of industrial buildings such as buildings used for production activities (used for assembly line activities), workshops, storage buildings and other similar industrial buildings) and is registered under GST having Registration Number 24AMEPS0530MIZ2. The registered person is also availing the facility of Input Tax Credit.



2(ii). The scrutiny under section 61 of the CGST Act, 2017 of the various returns filed by the appellant was conducted for the period from July' 2017 to March' 2018. During scrutiny of the GST return, (1) Wrong availment of ITC in contravention to the provisions of clause (c) of section 16(2) of the CGST Act, 2017 (2) Short Payment of Tax on difference between GSTR- 1 and GSTR-3B (3) Non-payment of interest and penalty, were noticed and the same were communicated to the appellant in the Form GST ASMT-10 as prescribed under rule 99 (1) of the CGST Rules, 2017. The appellant did not agree with discrepancies, hence, ASMT-10 dated 24.06.2022 was issued and raised objections to the appellant. The details of the objection raised on which demand raised by the adjudicating authority are as under:

- (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. 8,78,034/- (CGST Rs. 4,39,017/- and SGST Rs. 4,39,017/-) under the provisions of Section 74(1) of the CGST/SGST Act 2017 alongwith interest as per the provisions of Section 50 of the

CGST/SGST Act 2017 and penalty under the provisions of Section 74(1) of the CGST/SGST Act 2017;

- (ii) Short Payment of differential Tax as declared in GSTR-1 to that paid in GSTR-3B amounting to Rs. 7,862/- (CGST Rs. 3,931/- and SGST Rs. 3,931/- under the provisions of Section 74(1) of the CGST/SGST Act 2017 alongwith interest as per the provisions of Section 50 of the CGST/SGST Act 2017 and penalty under the provisions of Section 74(1) of the CGST/SGST Act 2017.

3. The adjudicating authority passed the impugned order dated 29.12.2023 and confirmed the demand as mentioned above on the following grounds:-

- that they had availed excess ITC amounting to Rs. 8,78,034/- (CGST Rs. 4,39,017/- & SGST Rs. 4,39,017/-) in their GSTR-3B Return as compared to the ITC auto populated in GSTR-2A Return in r/o the invoices issued by various suppliers which were not reflected in their GSTR-2A returns;

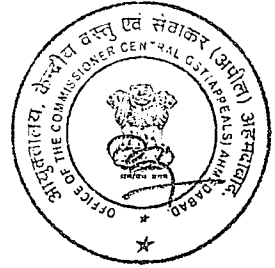
that the taxpayer has not submitted detailed/proper explanation vide ASMT-11. The summary of the ASMT- 11 is that the difference in GSTR 2A and GSTR 3B is because tax of sales return is included as credit in GSTR 3B. However the reconciliation statement submitted by the taxpayer does not tally with the figures from the sales register (submitted in excel format vide email dated 24.08.2022 & 21.12.2023) and no satisfactory justification has been given by the taxpayer regarding same;

- that the registered taxpayer has contravened the provisions of Section 16(2)(c) of CGST Act, 2017;
- that the registered person has short discharged the tax liability in the return by CGST of Rs. 3,931/- and SGST of Rs. 3,931/- on their declared liability;
- As per clause (b) Section 49(8) of the Act, the taxable person shall discharge its tax liability as per self-assessed tax related to the return of the current tax period. In the instant matter, the said tax payer not only failed to calculate tax correct liability but also failed in discharging the same.

4. Being aggrieved with the impugned order, the appellant preferred the present appeal on 11.03.2024 on the following reasons:

- That SCN and Order both are issued against the rule of natural justice without considering our demand of personal hearing as well as it was passed without considering our submission;

- That I have demanded personal hearing every time but they do not have provided opportunity of personal hearing. Copy of reply on 28/11/2023, 19/12/2023 and 22/12/2023 demanding personal hearing is attached here with. Sir, this is against the rule of natural justice because even after demand of opportunity of being heard it is not provided to me;
- That mismatch between GSTR 3B and 2A is due to amount of credit note (sale returned/ discount) has been mistakenly added in ITC instead of deduction from sales and same is corrected in GSTR-9. Copy of sales register along with credit note has already been submitted. However, officer has neither considered GSTR 9 nor reconciliation statement while issuing SCN or OIO. Which is against the rule of natural justice;
- That in Para 3.7 Authority has only stated that said vendors had not discharged the tax on the invoice issued to them, therefore ITC have been wrongly availed. Here authority has not given any details regarding invoices on which vendor has not discharged liability ;
- That as per Section 16(2) there is no need to make matching of ITC between GSTR 2A and 3B for availment of ITC it means that officer has taken wrong view which is against the provision of law itself. as per the decision of Calcutta high court which is up held by supreme court in case of Suncraft Energy Private Limited ITC of GST cannot be denied over a mismatch in GSTR 2A and GSTR 3B;
- That Para no 9.1 of order Authority has mentioned that registered person has submitted ASMT-11 on 23/08/2023 along with reconciliation statement however he is not satisfied with answer. We are not able to understand what mean by "no satisfaction." Because authority has not quantified what or which document/explanation has not been given by me. Only "no satisfaction" cannot be justified in legal means. Authority has mentioned that registered person has taken excessive credit in annual return. However as per GSTR-9 there is no excess credit;
- Officer has mentioned in para 4 of order that there is short payment of tax RS.7,862/-. I have demanded sources of data mentioned by officer in SCN in our reply dated 10/11/2022. However, officer has not provided such details. As per online portal following information about outward supply is available;
- that officer has issued notice and adjudication order in Section 74 of Act, which used in the case of wilful mis-statement, suppression of fact and Baud case, whereas there is no allegation even in single word of SCN that we have made these, how these all applicable in our case, which one condition is applicable in our case out of all three condition. Section 74 is no way applicable to us that's why we have to file appeal.



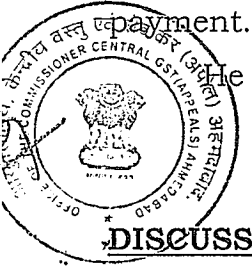
In view of foregoing, the appeal may please be allowed and Hon'ble Appellate Authority is also prayed to quash and set aside the demand order appealed against appellant.

Virtual Hearing :

5. Virtual hearing in the appeal was fixed/held on 26.04.2024 and 08.05.2024. Shri Ramesh Pujara, CA, appeared in person on behalf of the appellant in the present appeal. During Virtual hearing they stated that all documents submitted but after one year they received a call that they didn't received documents. Again documents submitted. No personal hearing granted even after being requested. Order passed without granting natural justice.

(i) All documents submitted online also. Only issue is sales return which by mistake mentioned in ITC and same was mentioned in GSTR-9. But no records considered by Adjudicating Authority.

(ii) As regards the data given for short payment, no evidence given about short



He further reiterated the written submissions and requested to allow appeal.

DISCUSSION AND FINDINGS:

6. I have gone through the facts of the case, written submission made by the 'appellant'. The adjudicating authority passed the impugned order and confirms the demand of:

(i) 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. 8,78,034/- alongwith interest and penalty. The details of ITC wrongly availed by the registered person is tabulated below:

Description	CGST	SGST	Total
ITC as per GSTR-3B	2610137	2610137	5220274
ITC as per GSTR-2A	2171120	2171120	4342240
Difference	439017	439017	878034

(ii) Short Payment of differential Tax as declared in GSTR-1 to that paid in GSTR-3B amounting to Rs. 7,862/- alongwith interest and penalty.

The details of ITC wrongly availed by the registered person is tabulated below:

Description	CGST	SGST	Total
ITC as per GSTR-1	2728090	2728090	5456180
ITC as per GSTR-3B	2724159	2724159	5448318
Difference	3931	3931	7862

7(i). In respect of issue mentioned at para 2(i), the Adjudicating Authority contended that the appellant has contravened the provisions of Section 16(2)(C) of the CGST Act 2017, as registered person shall not take ITC in respect of supplies on which the tax has actually not been paid to the government. In this regard, I hereby refer the relevant provisions as under:

Section 16. Eligibility and conditions for taking input tax credit.-

(1) *Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.*

(2) *Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,-*

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other taxpaying documents as may be prescribed;

(a) *the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;]*

(b)

(c) subject to the provisions of 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply”

(d) he has furnished the return under section 39:

7(ii). In the instant case, it is observed that the Input Tax Credit of Rs. 8,78,034/- was not reflected in the GSTR-2A return which was availed as ITC in their GSTR-3B returns and the tax charged in respect of certain transactions had not been actually paid to the Government account by the suppliers from whom they had made the purchases, Section 16(2)(c) of the Act says that the registered person shall not be entitled to take ITC in respect of supplies on which the tax has actually not been paid. Further, the appellant has not produced any documentary evidence to say that the suppliers from whom they had made purchase, had paid the tax leviable on the supplies. In view of the above, the appellant contended that mismatch between GSTR 3B and 2A is due to amount of credit note (sale returned/ discount) has been mistakenly added in ITC instead of deduction from sales and



same is corrected in GSTR-9. In case of issue of credit note the appellant have to reduce his liability, however in the instant case they have availed the ITC of the credit note. Further, the appellant has not mentioned that the ITC availed of the credit note has been reversed through DRC-03 or through debiting his credit ledger. In view of the above the ITC would not be admissible 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. 8,78,034/- is 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. 8,78,034/- (CGST Rs. 4,39,017/- and SGST Rs. 4,39,017/-) and is liable to pay under the provisions of Section 74(1) of the CGST Act, 2017 corresponding entry of Section 50 of the CGST Act, 2017 along with applicable interest under Section 50 of the CGST Act, 2017 and Penalty under Section 74 of the CGST Act, 2017.

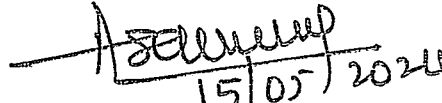
8. In respect of issue mentioned at para 2(ii), the adjudicating authority contended that the appellant had made short payment in Tax Liability as per GSTR-1 & GSTR-3B returns for the period from July-2017 to March 2018. The tax liability for the financial year 2017-18 (July 2017 to March 2018), as declared in GSTR-1 is Rs 54,56,180/- (CGST Rs. 27,28,090/- and SGST Rs. 27,28,090/-) but payment under GSTR-3B is Rs. 54,48,318/-(CGST 27,24,159/- and SGST Rs. 27,24,159/-). There is short payment of tax in GSTR-3B to the tune of Rs. 7,862/- (CGST Rs. 3,931/- and SGST Rs. 3,931/-). In this regard the appellant has submitted the copy of GSTR-1 for the financial year 2017-18. On scrutiny of the GSTR-1 returns it is observed that the tax liability as declared in GSTR-1 is Rs 53,91,851/- (CGST Rs. 26,95,925/- and SGST Rs. 26,95,925/-) which is less than the liability declared in their GSTR-3B for the financial year 2017-18 (July 2017 to March 2018). Hence, there is no short payment of tax and accordingly no demand arises.

9. In the instant case the appellant contended that SCN and Order both are issued against the rule of natural justice without considering our demand of personal hearing as well as it was passed without considering our submission. However it is observed that the adjudicating authority before issue of impugned order has followed the Principal of Natural Justice. As the appellant have been given

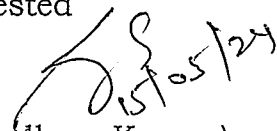
opportunity of Personal Hearing vide department office letter issued vide F.No. CGST/ AR-II/ GNR/SCRUTINY-2017-18/GST/2022-23/Palav dated 28.08.2023, 13.11.2023, & 23.11.2023 and on behalf of the appellant, the personal hearing has been attended by the Shri Ramesh Pujara, Chartered Accountant on 28. 11.2023 and stated that they have already submitted their reply on 23.8.2023.

10. In view of the above discussions (i) I uphold the demand of wrongly availed and utilized ITC amounting to Rs. 8,78,034/- (CGST Rs. 4,39,017/- and SGST Rs. 4,39,017/-) under the provisions of Section 74(1) of the CGST/SGST Act 2017 alongwith interest as per the provisions of Section 50 of the CGST/SGST Act 2017 and penalty under the provisions of Section 74(1) of the CGST/SGST Act 2017 and (ii) Drop the demand for Short Payment of Tax amounting to Rs. 7,862/- under Section 74(1) of the CGST Act 2017 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.


15/05/2024
(Adesh Kumar Jain)
Joint Commissioner (Appeals)
Date: 15.05.2024

Attested


(Sandheer Kumar)
Superintendent (Appeals)

By R.P.A.D.

To

M/s. Palav Enterprise,
(Legal Name: Shreyans Shah),
2/10, Sector-29, Akshardeep Complex,
Nr. GH-6, Gandhinagar, Gujarat-382030.

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

