



सत्यमेव जयते

आयुक्तकाकार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeal Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.
GST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
Phone: 079-26305065 Fax: 079-26305136
E-Mail : commrappl1-cexamd@nic.in



By Regd. Post

DIN NO.: 20231264SW0000121671

(क)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTP/2832/2023 / १९९३ - १३
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-CGST-002-APP-JC-103/2023-24 and 29.11.2023
(ग)	पारित किया गया / Passed By	श्री आदेश कुमार जैन, संयुक्त आयुक्त (अपील) Shri Adesh Kumar Jain, Joint Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	01.12.2023
(ङ)	Arising out of Order-In-Original No. 01/SUPDT.AR-V/2023-24 dated 09.06.2023 passed by The Superintendent, CGST, Range-V, Division-I, Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Ramilaben Mukeshbhai Patel (M Tech Weigh System) (GSTIN: 24CTUPP7778P1Z7), A/1, Radhika Park Society, Kathwada Road, Naorda, Ahmedabad, Gujarat-382330

(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 <u>twenty five per cent</u> 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 .

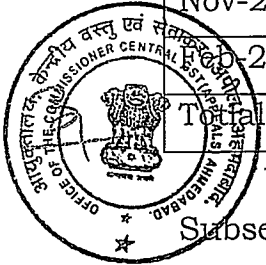


ORDER-IN-APPEALBRIEF FACTS OF THE CASE:

M/s. RAMILABEN MUKESHBHAI PATEL (legal Name) M TECH WEIGH SYSTEM(Trade Name), A/1, RADHIKA PARK SOCIETY, KATHWADA ROAD, NARODA, Ahmedabad, Gujarat, 382330 (GSTIN 24CTUPP7778P1Z7) (hereinafter referred to as "the appellant"), have filed appeal against Order-In-Original No.01/Supdt-AR.V/2023-24, dated 09.06.2023 (hereinafter referred to as the "impugned order") passed by the Superintendent, CGST & C.Ex., AR-V Division-I, Ahmedabad-North Commissionerate (hereinafter referred to as the "adjudicating authority").

2. Facts of the case in brief, are that the Appellant is engaged in Manufacturing of Weighbridge Structures, Weighbridge Beam, MS Plate and Weighbridge accessories falling under Chapter 84. During the audit conducted by the Department, it was observed that the Appellant had undertaken export clearances, details of which are as under:

Month	TaxableValue	IGST
Sep-2017	13,16,042	3,68,491.76
Nov-2017	09,50,625	1,71,112.50
Feb-2018	18,32,100	3,29,778.00
Total	40,98,767	8,69,382



Subsequently, while filing the GSTR- 3B, the tax payer, probably by mistake failed to furnish certain required details like that of about the Custom House Agent, Port etc. in their GSTR-1 & 3B. As a result, the refund thereto due to them did not come forth. Moreover, the Appellant then instead of approaching proper authority for rectification of referred to mistake, after waiting for nearly 11 months, reproduced their export details which were actually pertaining to the months of September-2017, November-2017 and February-2018 in their GTR-1 & GSTR-3B of November 2018 fraudulently without any actual export in November-2018. Therefore, the Appellant had created tax liability of Rs. 08,69,382/- as IGST liability in GSTR-1 of the month of November-2018 by reproducing the export details which were actually pertaining to the months of September- 2017, November-2017 and February-2018; further while filing of GSTR-3B of November-2018, the Appellant added ITC of Rs. 08,69,382/- in IGST column of Table-4 of GSTR-3B by wrongly taking input tax credit to the tune of Rs.08,69,382/- in gross violation of Section-16 of Chapter-V of CGST Act, 2017 without any tax

invoice or debit note or without receipt of any goods or services or both then after having taken such ineligible Input tax credit, they set of their IGST liability of Rs.08,69,882/- for the month of November-2018 with this wrongly Taken ITC. Thus the Appellant seems too had availed and utilized ITC fraudulently just to facilitate the clearance of their stuck up refund claim. Thus, the refund so received by the tax payer appeared too had been received by an act of fraud, mis-information, mis-statement on their part. This act of availing ineligible credit as per Section-16 of CGST Act, 2017 results in generation of refund which needs to be recovered from the Appellant as per the provisions of Section 20 of IGST Act, 2017 read with Section 74 of CGST Act, 2017.

Therefore a show cause Notice was issued to the appellant asking them as to why:

(i)IGST of Rs.08,69,382/- received as refund by an act of fraud, mis-information, mis-statement, should not be demanded and recovered from them under Section 20 of IGST Act, 2017 read with Section 74 of CGST Act, 2017.

(ii) Interest should not be demanded and recovered from them, under the provisions of Section 50(1) of the CGST Act, 2017 read with Section 20 of IGST Act, 2017 on the tax demanded at (i) above ;

Penalty should not be imposed and recovered from them on the tax demanded at (i) above, under the provisions of Section 122(2)(b) of the CGST Act read with Section 74 of the CGST Act and Section 20 of IGST Act, 2017.

The adjudicating authority passed the following order :

(1) The demand of IGST amounting to Rs.08,69,382/-received by the tax payer as refund, by an act of fraud, mis-information, mis-statement, is hereby confirmed under Section 74 (1) of CGST Act, 2017 read with Section 20 of IGST Act, 2017.

(2) I hereby order to pay the applicable interest on the demand confirmed as mentioned (1) above under section 50 of the CGST Act, 2017.

(3) I hereby impose a penalty of Rs.08,69,382/- on the said Tax Payer i.e. M/s. M-Tech Weigh System, A/1, Radhika Park Society, Naroda Kathwada Road, Naroda Ahmedabad- 382 330 under Section 122 (2) (b) of CGST Act, 2017 read with Section 74 of CGST Act, 2017 and Section 20 of IGST Act, 2017, for violation of the various sections and rules of the CGST Act, 2017.

4. Being aggrieved with the impugned order, the appellant preferred appeal on the following grounds:

“1. The learned superintendent has erred in law and fact in considering the refund of Rs.8,69,382/- as an act of fraud, mis-information, mis-statement u/s 74(1) of the COST Act read with Section 20 of the IGST Act, as the appellant has (i) received the legitimate refund of export of goods with payment of IGST on the basis of actual exports made and tax settled through GSTR 3B & (ii) has not received the refund in excess of eligible refund amount. The appellant has provided all details of export as required on GST portal and also paid taxes. This claim is supported by valid shipping bills too.

2. The learned superintendent has erred in law and fact in imposing penalty of Rs. 8,69,382/- u/s 1 22(2)(b) of the CGST Act as the refund or input tax credit are not for the reason of fraud or wilful misstatement or suppression of facts to evade tax.

3. In entire order, the learned superintendent has not provided any supporting evidence to prove that the act of the appellant is fraud or wilful misstatement or suppression of facts to evade tax, it is just an allegation made without considering the genuine issues faced by the appellant on ground level and in light of the initial months where even the departmental officials were not clear about the procedure about amendments or changes in GSTR 3B. The same has been highlighted by many cases across the nation in cases across various high courts.”

Further, the appellant has prayed that the impugned order be set aside.



5 Personal hearing in this case was held on 17.10.2023. Shri Shridhar Shah, Chartered Accountant appeared in person, on behalf of the appellant as authorized representative. He submitted that it's a procedural mistake done as there is no revenue loss and no ITC Credit availed fraudulently. He further reiterated the written submissions and requested to allow appeal.

“
6 DISCUSSION AND FINDINGS:-

6.1 I have carefully gone through the facts of the case and the submissions made by the appellant in their grounds of appeal and observe that the appellant is mainly contesting with the demand of refund of IGST amounting to Rs.08,69,382/- received on export of goods, on payment of IGST raised by an act of fraud, mis-information, mis-statement along with interest and penalty.

6.2 So the issue to be decided in the present appeal is:

Whether the impugned order passed by the adjudicating authority with regard to demand of IGST amounting to Rs.08,69,382/- received by the Taxpayer as refund, under Section 74 (1) of CGST Act, 2017 read with Section

20 of IGST Act, 2017 along with applicable interest under section 50 of the CGST Act, 2017 and penalty under the provisions of Section 122(2)(b) of the CGST Act read with Section 74 of the CGST Act and Section 20 of IGST Act, 2017 is correct or otherwise?

6.3. At the foremost, I observed that in the instant case the "impugned order" is of dated 09-06-2023 and the date of communication of order is 12.06.2023 and the present appeal is filed on 11.09.2023. As per Section 107(1) of the CGST Act, 2017, the appeal is required to be filed within three months time limit. Therefore, I find that the present appeal is filed within normal period prescribed under Section 107(1) of the CGST Act, 2017. Accordingly, I am proceeding to decide the case.

6.4 I observe that the appellant is engaged in the business of manufacturing of weighbridge and allied products. The appellant had exported under three invoices, during the months of September, 2017, November 2017 & February, 2018 under Export with payment of IGST amounting to Rs.8,69,382/- as detailed in the table at para 2 above.

6.5 I further, observe that the Appellant on their own created an IGST Liability during the month of November-2018 by showing the details of export which were not undertaken during the said month and further taken credit of the IGST paid during the months of September, 2017, November, 2017 & February, 2018, to set off the current liability i.e. availed the Input Tax Credit without any valid document i.e. invoice, Debit Note or any other supporting document as required under the provisions, thereby utilised the same towards payment of IGST on the exports which were not undertaken during the said month.

6.6 I find that Eligibility conditions for taking Input Tax Credit are provided in Section 16 of the CGST Act, 2017 and the provisions of Refund of IGST paid on export of goods (or services) exported out of India, is governed under Rule 96 of the CGST Rules, 2017.

The relevant text of the above provisions is reproduced here 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 tax paying documents as may be prescribed;

¹[(aa) 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) he has received the goods or services or both.

³[(ba) the details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted;]

(c) subject to the provisions of ⁴[section 41 ⁵[***]], the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and

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

Rule 96. Refund of integrated tax paid on goods ¹[or services] exported out of India.-

(1) The shipping bill filed by ²[an exporter of goods] shall be deemed to be an application for refund of integrated tax paid on the goods exported out of India and such application shall be deemed to have been filed only when:-

(a) the person in charge of the conveyance carrying the export goods duly files ³[a departure manifest or] an export manifest or an export report covering the number and the date of shipping bills or bills of export; and

(b) ⁴ [the applicant has furnished a valid return in FORM GSTR-3B:

Provided that if there is any mismatch between the data furnished by the exporter of goods in Shipping Bill and those furnished in statement of outward supplies in FORM GSTR-1, such application for refund of integrated tax paid on the goods exported out of India shall be deemed to have been filed on such date when such mismatch in respect of the said shipping bill is rectified by the exporter;]

¹⁷[(c) the applicant has undergone Aadhaar authentication in the manner provided in rule 10B;]

(2) The details of the ⁵[relevant export invoices in respect of export of goods] contained in FORM GSTR-1 shall be transmitted electronically by the common

portal to the system designated by the Customs and the said system shall electronically transmit to the common portal, a confirmation that the goods covered by the said invoices have been exported out of India.

⁶[Provided that where the date for furnishing the details of outward supplies in FORM GSTR-1 for a tax period has been extended in exercise of the powers conferred under section 37 of the Act, the supplier shall furnish the information relating to exports as specified in Table 6A of FORM GSTR-1 after the return in FORM GSTR-3B has been furnished and the same shall be transmitted electronically by the common portal to the system designated by the Customs:

Provided further that the information in Table 6A furnished under the first proviso shall be auto-drafted in FORM GSTR-1 for the said tax period.]

(3) Upon the receipt of the information regarding the furnishing of a valid return in ⁷[FORM GSTR-3B] from the common portal, ⁸[the system designated by the Customs or the proper officer of Customs, as the case may be, shall process the claim of refund in respect of export of goods] and an amount equal to the integrated tax paid in respect of each shipping bill or bill of export shall be electronically credited to the bank account of the applicant mentioned in his registration particulars and as intimated to the Customs authorities.”

6.7 I observe that the Appellant has availed the Input Tax Credit of Rs.8,69,382/- of IGST, without any valid document i.e. invoice, Debit Note or any other taxpaying document as required in the provisions *ibid*. Further, I find that, no any such document is produced by the appellant at any time before this authority in support of their contention, and none of the conditions as stipulated in the Section 16 of the CGST Act, 2017 has been fulfilled, hence as per my view the appellant has violated the provisions of Section 16 of the CGST Act, 2017 to avail the refund of Rs.8,69,382/- . As per my view they could have rectified their Return for any mis-match, as per the provisions under the CGST/IGST Act, 2017, for the relevant period for which refund was due. The appellant instead of taking such process of rectification has taken the said credit on their own in the subsequent period and utilised the same for payment of IGST, thereby contravening the provisions of the CGST Act/Rules 2017 read with provisions of IGST Act, 2017.

Therefore, I find that the order passed by the adjudicating authority is proper and legal.

6.8 Further, I observe that the demand has been raised by the adjudicating authority along with interest and penalty.

6.9 I find that the interest as per the provisions of Section 50(3) of the CGST Act, 2017 read with the provisions of IGST Act, 2017 is applicable on the said demand of ITC of IGST of Rs.8,69,382/- which has been availed as refund by the appellant.

6.10 Further, as regards to imposition of Penalty under Section 74(1) of the CGST Act, 2017 read with Section 122(2)(b) of the CGST Act, 2017 and also read with similar provisions of IGST Act, 2017, I refer the same provisions, the text of which is as under:

**Section 74. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any willful- misstatement or suppression of facts.-*

(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice."

Section 122. Penalty for certain offences.-

(2). Any registered person who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilised,-

(b) for reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty equal to ten thousand rupees or the tax due from such person, whichever is higher."

6.11 It is observed that the appellant has availed ITC of IGST to the tune of Rs.8,69,382/- without any documents prescribed under Rule 36 of the CGST/GGST Rules, 2017 read with Section 16 CGST/GGST Rules, 2017 which is in contravention of the provisions ibid and availed the refund of the IGST paid, in spite of the fact that the said credit was not eligible to be taken. The whole act, of taking credit of IGST, showing details of Export which were not undertaken during the month November-2018, setting off the said credit of IGST against liability of such exports, is an act which is not allowable under any of the provisions of the CGST/IGST Act, or the Rules made there under. Thus the said act of the Appellant is willful and misstated, suppressing the material facts which were detected during Audit by the Department, as explained in the foregoing paras and in gross violation of the provisions of Law.

6.12 Therefore, I am of the view that the penalty imposed under Section 74(1) of the CGST Act, 2017 read with Section 122(2)(b) of the CGST Act 2017, read with Section 20 of the IGST Act 2017, vide the impugned order, is proper and legal

7 In view the foregoing facts and discussions, I do not find any infirmity in the order passed by the adjudicating authority in the present case. Thus O-I-O is upheld being Legal and proper.

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

8. The appeal filed by the "Appellant" stands disposed of in above terms.

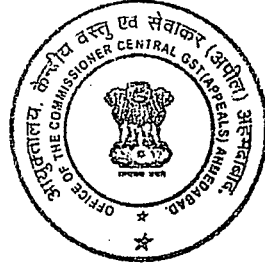
Adesh Kumar Jain
29/11/2023

(ADESH KUMAR JAIN)
JOINT COMMISSIONER (APPEALS)
CGST & C.EX., AHMEDABAD.

Date : 29.11.2023

ATTESTED.

Sunila D. Nawani
(SUNILA D. NAWANI)
SUPERINTENDENT
CGST & C.EX.(APPEALS),
AHMEDABAD.



By R.P.A.D.

M/s. RAMILABEN MUKESHBHAI PATEL (legal Name)
M TECH WEIGH SYSTEM(Trade Name),
A/1, RADHIKA PARK SOCIETY, KATHWADA ROAD,
NARODA, Ahmedabad, Gujarat, 382330.
(GSTIN 24CTUPP7778P1Z7)

Copy to:

1. The Principal Chief Commissioner of CGST & C.Ex., Ahmedabad Zone.
2. The Commissioner, CGST & C. Excise, Appeals, Ahmedabad.
3. The Commissioner, CGST & C.Ex, Ahmedabad-North Commissionerate.
4. The Dy / Assistant Commissioner, CGST & C.Ex, Division-I Ahmedabad-North Commissionerate.
5. The Superintendent , CGST & C.Ex, AR-V, Division-I Ahmedabad-North Commissionerate.
6. The Superintendent (Systems), CGST Appeals, Ahmedabad, for publication of the OIA on website.
7. Guard File/P.A. File.



