



सत्यमेव जयते

आयुक्तकाकार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeal Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.
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DIN NO.: 20231264SW0000777B23

(क)	फाइल संख्या / File No.	GAPPL/ADC/GSTP/3094/2023 / 8900 - 8906
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-CGST-002-APP-JC-106/2023-24 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	04.12.2023
(ङ)	Arising out of Order-In-Original No. CGST/WT0702/02/DEM/QMIN/2022-23 dated 30.03.2023 passed by The Superintendent, CGST, Range-II, Division-VII, Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Qmin Industries Limited (GSTIN: 24AAACQ3461A1Z1), Plot No. 38, Vikram Park Tenement, Opposite Bajrang Das Bappa Ashram, Behind Ambica Patrol Pump, Thakkar Bappa Nagar, Ahmedabad, Gujarat-382350

(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) <u>Full amount of Tax, Interest, Fine, Fee and Penalty</u> 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-APPEAL**BRIEF FACTS OF THE CASE:**

M/s. Qmin Industries limited, Plot No. 38, Vikram Park Tenement, Opposite Bajrang Das Bappa Ashram, Behind Ambica Patrol Pump, Thakker Bappa Nagar, Ahmedabad, Gujarat- 382350, (hereinafter referred to as the "appellant") has filed the appeal on 10.10.2023 against Order-in-Original No. CGST/WT0702/02/DEM/QMIN/2022-23, dated 30.03.2023 (date of communication of order is 22.06.2023) (hereinafter referred to as the "impugned order") passed by the Superintendent, Central GST & C.Ex., Range-II, Division- VII, Ahmedabad North Commissionerate, (hereinafter referred to as the "adjudicating authority") for excess claim of ITC in GSTR-3B/9 in the context of ITC appearing in GSTR 2A, amounting to Rs. 4,85,476/- under Section 74(1) of the CGST Act, 2017 alongwith interest under Section 50 (1) of the CGST Act, 2017 and penalty under Section 74(1) read with Section 122(2)(b) of the CGST Act, 2017.

2. Brief facts of the case in the present appeal is that the appellant registered under GSTIN 24AAACQ3461A1Z1, are engaged in the supply of garments falling under CH 6210 and medicaments falling under CH 3003 etc. The taxpayer is also availing the facility of Input Tax Credit. During the course of the audit of the records of the taxpayer, conducted for the period from July 2017 to March 2020, it was observed that the appellant had taken Input tax Credit in GSTR 3B return/Column No 88 (Pt II) to GSTR 9 return which was in excess to what was available to them under GSTR 2A return/column No 8A (Pt III) to GSTR 9 return. The appellant has taken Input tax Credit amount to Rs.8,13,944/- on the basis of invoices, which were not reflected in concerned GSTR-2A.

3. The appellant was further issued show Cause Notice dated 04.02.2022 and confirm the said demand. Further, the adjudicating authority passed the impugned order and modified the demand to recover the ITC of amounting to Rs. 4,85,476/- under the provisions of Sections 74(1) of the CGST Act read with the SGST Act, 2017 alongwith interest under Section 50(1) of the CGST Act read with the SGST Act, 2017 and penalty amounting to Rs. 4,85,476/- under Section 74(1) read with Section 122(2)(b) of the CGST Act read with similar provision of SGST Act, for the following reasons :

- that with reference to invoices mentioned in the notice at SI No. 1 & 2, issued by M/s. Stitched Textiles OPC Pvt Ltd, there are many contradictions in the facts presented by the noticee as can be seen from the documents furnished by them. (i) the table shows the name of supplier as M/s. Stitched Textiles OPC Pvt

Ltd, the invoice submitted by them shows the name of supplier as M/s. Stitched Audited, whereas the submitted copy of GSTR 2A shows the supplier name as M/s. Stitched Textiles Ltd;

- that the audit officers had mentioned invoice numbers as 89 & 91, which the noticee says incorrect and they show actual invoice numbers as 50 & 52, for substantiating their claim they submitted the copies of invoices and a relevant page of GSTR 2A, however the submitted copy of GSTR 2A have no mention of invoice numbers 50 & 52 as claimed by them, it shows the reference no mentioned in invoices. The copy of GSTR 2A is also not exhaustive, that audit officers may have correctly seen those invoice numbers at the time of audit and did not find those invoices; that on being pointed out at the time of audit by the officers, the noticee had informed that the supply in the said cases were cancelled, however the taxpayer had booked the same in their books of accounts, whereas now the noticee is coming out with different version of defense without denying or explaining their earlier submissions, which seems to be an afterthought. The evidences & explanation provided by the noticee are not at all satisfactory. Therefore, the charge of ITC wrongly availed on those 2 invoices is substantiated.

- Regarding SI.No.8 of the table ITC of CGST Rs.1,61,962/- + SGST Rs. 1,61,962/- (Total Rs. 3,23,924/-); that they have submitted in their defense reply that supplies under the invoices Nos. F191, F197, F192, all dated 28.10.2019 and F196 & F195 both dated 29.10.2019 as detailed in the table by them was received, however same was rejected by them on the grounds of quality and therefore vendor (Consignor) had issued credit notes corresponding to those invoices; that credit notes nos. 99,100,101,102 & 103 all dated 01.11.2019 as detailed by them and copies submitted by them on record are not reflected GSTR 2A for the month of November 2019 under the heading of CDNR; that the tax payer has produced worksheet showing difference between GSTR 3B and GSTR 2A for the months June'19 to November'19, however, on perusal of the said worksheet it could not be ascertained that differences are due to credit notes. The evidences & explanation provided by the noticee are not at all satisfactory; that reversed the credit of ITC of CGST Rs.1,61,962/- + SGST Rs. 1,61,962/- (Total Rs. 3,23,924/-) is not proved by the taxpayer. They are failed to produced sustainable evidence regarding reversed the credit of ITC of CGST Rs.1,61,962/- + SGST Rs. 1,61,962/- (Total Rs. 3,23,924/-), for the said credit notes. Therefore, the charge of ITC wrongly availed of Rs. 3,23,924/- (CGST Rs.1,61,962/- + SGST Rs. 1,61,962/-) on invoices is substantiated.



4. Being aggrieved with the impugned order, the appellant preferred the present appeal on 10.10.2023 for the following reasons:

- that that Appellant had availed the credit of Input tax credit as prescribed in GST law. There has been no violation of the provisions of GST law. The credit availed is legal and just and availment of the credit is within the frame work of GST law.
- that towards serial No. 1 and 2 of the Table A ibid, it was submitted in the adjudication proceedings that the invoice number quoted by the Audit team are incorrect. They are actually invoice No. 50 8: 52 dated 18.12.19 and 22.12.19 respectively. The plea so advanced was rejected on the grounds, that a perusal of the GSTR 2 A of the supplier indicated that the two invoices under reference were reflected as F-31 A and F-32 A dated 18.12.2019 and 22.12.2019. It was factually reference No. and instead of Invoice numbers, the supplier had quoted reference No. in the GSTR- 2A. We have now obtained the said invoices duly with reference number and also correct invoice number. In other words, the ambiguity erupted due to quoting reference 9 number instead invoice number. Evidently, the responsibility casted upon the supply receiver under Section 16 of the Act deemed to have been fulfilled, where the error in GSTR 2 A was only related to quoting of reference numbers given in the respective invoices, which is purely technical in nature. Thus, the ITC taken was just and legal.

With regards to the Sl No. 8 of the Table A, it is respectfully submitted that the supply as per the following invoices was received, however, the same was rejected by us on the grounds of quality and thereafter vendor (consignor) has issued a credit notes to us. Thus, on receipt of inward supply the credit was taken on 28th Oct, 2019 and on rejection of the goods due to quality issue and on receipt necessary Credit notes dated 1st Nov, 2019 issued to us by the supplier, the ITC so taken was reversed by us. The Invoices and corresponding credit notes issued by the vendor (consignor) are attached

- that in this case the responsibility imposed upon the taxpayer with regard to availment of ITC under Section 16 (2) of the Act has been fulfilled and the ITC taken is admissible to us. Also, in other case (SL No.8 of the table) due to return of the goods, the ITC taken has since been reversed and resultantly, in the reconciliation prepared by the audit no discrepancy was noticed

In the above facts and circumstances of the case and the grounds of the appeal, it is humbly prayed that:- The Impugned order may be set aside with consequential relief to the applicant.

PERSONAL HEARING :

5. Personal hearing in the present appeal was held on 01.11.2023 and 09.11.2023. Shri M.K.Kothari, Tax Consultant Authorized Representative appeared in person on behalf of the appellant in the present appeal. During P.H. they have

submitted that all compliance in view of Circular No. 183/15/2022 dated 27.12.2022. He further reiterated the written submission and requested to allow appeal. He further submitted a copy of C.A. certificate as required under the said circular.

DISCUSSION AND FINDINGS:

6. I have gone through the facts of the case, written submissions made by the 'appellant'. The main issue to be decided in the instant case whether the appellant had wrongly availed Input Tax Credit in comparison to GSTR-2A with GSTR-3B/9, amounting to Rs. 4,85,476/- alongwith interest and penalty.

7(i). In the instant case, adjudicating authority is contending that the appellant has contravened the provisions of Section 16 and Section 36(4) of CGST Act 2017. 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 tax paying documents as may be prescribed;

(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.

2[**Explanation.-** For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services-

(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person;]

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 utilization of input tax credit admissible in respect of the said supply; and

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



Rule 36. Documentary requirements and conditions for claiming input tax credit.-

(1) The input tax credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents, namely,-

(a) an invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31,

(b) an invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31, subject to the payment of tax;

(c) a debit note issued by a supplier in accordance with the provisions of section 34;

(d) a bill of entry or any similar document prescribed under the Customs Act, 1962 or rules made there under for the assessment of integrated tax on imports;

(e) an Input Service Distributor invoice or Input Service Distributor credit note or any document issued by an Input Service Distributor in accordance with the provisions of sub-rule (1) of rule 54.

(4) Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-section (1) of section 37, shall not exceed [10 per cent]43 of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub-section (1) of section 37.



In this regard, it is observed that the invoices amounting to Rs. 80,176/- mentioned in the notice at SI No. 1 & 2, issued by the supplier i.e. M/s. Stitched Textiles OPC Pvt Ltd, have many contradictions in the facts presented by the appellant as can be seen from the documents furnished by them. The table shows the name of supplier as M/s. Stitched Textiles OPC Pvt Ltd, the invoice submitted by them shows the name of supplier as M/s. Stitched Audited; whereas the submitted copy of GSTR 2A shows the supplier name as M/s. Stitched Textiles Ltd. Further in GSTR-2A, invoice number showing 89 & 91, however after verification of the invoice it is found that the actual invoice numbers are 50 & 52. The evidences & explanation provided by the appellant are not satisfactory. In view of the above it is observed that the appellant has wrongly availed ITC on those 02 invoices.

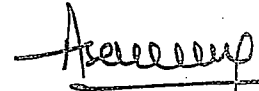
7(iii). In respect of SI.No.8 of the table ITC of CGST Rs.1,61,962/- + SGST Rs. 1,61,962/- (Total Rs. 3,23,924/-) it is observed that the appellant has received the invoices Nos. F191, F197, F192, all dated 28.10.2019 and F196 & F195 both dated 29.10.2019 in respect of supply of goods, however, the same was rejected by them on the grounds of quality and thereafter vendor (consignor) has issued credit notes nos. 99,100,101,102 & 103 all dated 01.11.2019 to the appellant. On receipt of inward supply the appellant has taken the credit was taken on 28Oct, 2019 and on rejection of the goods due to quality issue and on receipt necessary Credit notes dated 01Nov, 2019 issued to the appellant by the supplier, the ITC so taken was reversed by the appellant. In this regard, it is observed that the credit notes nos.

99,100,101,102 & 103 all dated 01.11.2019 as detailed by them and copies submitted by them on record are not reflected GSTR 2A for the month of November 2019 under the heading of CDNR. Further it could not be ascertained that differences of ITC claimed of Rs. 3,23,924/- are due to credit notes and in credit notes nos. 99,100,101,102 & 103 dated 01.11.2019 original invoice number and date are also not mentioned. Therefore the evidences & explanation provided by the appellant are not at all satisfactory and it is observed that the appellant has wrongly availed ITC on all the said invoices.

8. In the instant case it is observed that during the personal hearing the authorized representative have quoted the benefit of circular No.183/15/2022-GST, dated 27.12.2022. In this regard it is mentioned that the clarifications given hereunder are case specific and are applicable to the bonafide errors committed in reporting during FY 2017-18 and 2018-19. The current issue pertains for the financial year 2019-20, hence not applicable in the said matter.

9. 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, I find that the impugned order of the adjudicating authority is legal and proper and 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: 29.11.2023

Attested


(Sandheer Kumar)
Superintendent (Appeals)
By R.P.A.D.

To

M/s. Qmin Industries limited,
Plot No. 38, Vikram Park Tenement,
Opposite Bajrang Das Bappa Ashram,
Behind Ambica Patrol Pump, Thakker Bappa Nagar,
Ahmedabad, Gujarat- 382350.

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, Ahmedabad North Commissionerate.
 4. The Dy. / Assistant Commissioner, CGST & C.Ex, Division-VII, Ahmedabad North Commissionerate.
 5. The Superintendent, CGST & C.Ex, Range-II, Division- VII, Ahmedabad North Commissionerate.
 6. The Superintendent (Systems), CGST Appeals, Ahmedabad, for publication of the OIA on website.
- Guard File
8. P.A. File.

