



सत्यमेव जयते

आयुक्तकाकार्यालय  
Office of the Commissioner  
केन्द्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय  
Central GST, Appeal Ahmedabad Commissionerate  
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी 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.: 20231264SW000000B5A8

(क)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTP/2442/2023 /9260 - 9266
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-CGST-002-APP-JC-109/2023-24 and 30.11.2023
(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	06.12.2023
(ङ)	Arising out of Order-In-Original No. CGST/WT0701/KVS/01/2023-24 dated 28.04.2023 passed by The Superintendent, CGST, Range-I, Division-VII, Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Megh Overseas Pvt Ltd (GSTIN: 24AAJCM2943C1ZR), A/43, Aditya Residency, Nr Swagat Greenvilla, Thaltej, Ahmedabad, Gujarat-380059

(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 <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-APPEALBRIEF FACTS OF THE CASE:

M/s. Megh Overseas Pvt.Ltd. A/43, ADITYA RESIDENCY, NR SWAGAR GREENVILLA, THEALTEJ, Ahmedabad, Gujarat, 380059 (GSTIN 24AAJCM2943C1ZR.) (hereinafter referred to as "the appellant"), have filed appeal against CGST/WT0701/KVS/01/2023-24, dated 28.04.2023 (hereinafter referred to as the "impugned order" ) passed by the Superintendent, CGST & C.Ex.,Range-I, Division-VII, Ahmedabad-North Commissionerate (hereinafter referred to as the "adjudicating authority").

2. Facts of the case in brief, are that the appellant are is engaged in supply of aata, namkeen, biscuits, masala (spices), cold drinks etc. During the Audit conducted by the Department, it was observed that the Appellant had wrongly availed Integrated Goods and Service Tax (IGST), Central Goods and Service Tax ('CGST') and State Goods and Services Tax, ('SGST') (collectively ITC) as under:

## 02. EXCESS AVAILMENT OF INPUT TAX CREDIT ('ITC')

Particulars	Returns	IGST	CGST	SGST
ITC reflected in	GSTR 9, Pt III, 8A and GSTR 2A	73762	707583	707583
ITC reflected in	GSTR 9, Pt III, 8B and GSTR 3B	190893	721112	721112
ITC not admissible	ITC available in their GSTR 3B return minus ITC available in their GSTR' 2A return.	117131	13529	13529

## 03. AVAILMENT OF ITC WITHOUT DUTY PAYING DOCUMENTS

Particulars	Returns	IGST	CGST	SGST
ITC reflected in	GSTR 9, Pt III, 8B and GSTR 3B	190893	721112	721112
ITC available on invoices produced	INVOICES	0	421035	421035
ITC not admissible	ITC Available In The Invoices held by them Minus The Input Tax Credit Availed In GSTR 3 B/GSTR 9 (Pt.III B) Return.	190893	300077	300077

04. DIFFERENCE IN RECONCILIATION IN GSTR 9C RETURN :

The appellant had received an amount of Rs.6,31,345/- as rate difference from a person located in the non-taxable territory. It appeared that the supplier/assessee had not discharged the IGST amounting to Rs.1,13,642/-. The rate difference amount has been received in relations to transactions from persons located in the non-taxable territory, as per the rate difference ledger for the period from July 2017 to March 2018, had not paid the tax within the prescribed due dates on the amounts received by them from a person located in the non-taxable territory. The receipt of the amounts have not been shown in their GSTR 3B returns. The tax amounting to Rs.1,13,642/- is required to be demanded and recovered from the supplier, under the provisions of Section 74(1) of the Act read with the provisions of Section 20 of the IGST Act.

Therefore, a show-cause-notice was issued to the Appellant as to why?

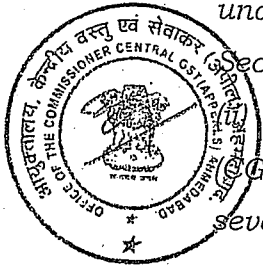
"(1) ITC amounting to Rs.1,44,189/- (Rs.1,17,131/- (IGST) + Rs.13,529/- (CGST) + Rs.13,529/- (SGST) (Rupees One lac forty four thousand one hundred eighty nine only) should not be disallowed and recovered from the noticee, under the provisions of Sections 74(1) of the Act read with the provisions of Section 20 of the IGST Act;

ITC amounting to Rs.7,91,047/- (Rs.1,90,893/- (IGST) + Rs.3,00,077/- (CGST) + Rs.3,00,077/- (SGST) (Rupees Seven lacs ninety one thousand forty seven only) should not be disallowed and recovered from the noticee, under the provisions of Sections 74(1) of the Act read with the provisions of Section 20 of the IGST Act;

(iii) tax amounting to Rs.1,13,642/- (IGST) (Rupees One lac thirteen thousand six hundred forty two only) should not be demanded and recovered from them under the provisions of Section 74(1) of the Act read with the provisions of Section 20 of the iGST Act;

(iv) interest should not be charged and recovered from them, under the provisions of Sections 50(1) of the Act read with the provisions of Section 20 of the IGST Act on the proposed recovery at (i), (ii) and (iii) above;

(v) penalty should not be imposed on them, under the provisions of Sections 74(1) of the Act read with the provisions of Sections 122 (2) (b) of the Act and Section 20 of the IGST Act on the proposed recovery of tax at (i), (ii) and (iii) above."



3. The adjudicating authority passed the order as under :

"(i) I confirm the demand of ITC amounting to Rs.1,44,189/- (Rs.1,17,131/- IGST) + Rs.13,529/- (CGST) + Rs.13,529/- (SGST) under the provisions of Section 74(1) of CGST Act, 2017 read with the provisions of Section 20 of the IGST Act, 2017.

(ii) I confirm the demand of ITC amounting to Rs.7,91,047/- (Rs.1,90,893/- (IGST) + Rs.3,00,077/- (CGST) + Rs.3,00,077/- (SGST) under the provisions of Section 74(1) of the CGST Act, 2017 read with the provisions of Section 20 of the IGST Act, 2017.

(iii) I confirm the demand of Rs.1,13,642/- (IGST) under the provisions of Section 74(1) of the CGST Act, 2017 read with provisions of Section 20 of the IGST Act, 2017.

(iv) I confirm the demand of interest on the recoveries mentioned at Sr.No.(i),(ii) and (iii) mentioned above under Section 50(1) of the CGST Act, 2017 read with provisions of Section 20 of the IGST Act, 2017.

(v) I impose a penalty of Rs.10,48,878/- [Rs.1,44,189 + Rs.7,91,047 + Rs.1,13,642] under the provisions of Section 74(1) of the CGST Act, 2017 read with the provisions of Section 122(2)(b) of the CGST Act, 2017 and Section 20 of the IGST Act, 2017."

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

## 2. EXCESS AVAILMENT OF INPUT TAX CREDIT ('ITC')

Financial Year 2017-18 is the initial period of the GST era as per the Taxable Purchase Invoices and other documents we had first Booked Input Tax Credit (herein after referred as "ITC") in our accounts on that basis we had availed ITC in the GSTR-3B however if the same ITC was not available (i.e. auto populated Purchase ITC) in GSTR-2A it might be due to wrong reporting by our suppliers we had produced invoices and evidence of delivery where available however the respected superintendent had issued order without considering the invoices which was not reflected in GSTR-2A. During the FY 2017-18 there is no cap limit in regards to GSTR-2A and GSTR-3B ITC.

## 03. AVAILMENT OF ITC WITHOUT DUTY PAYING DOCUMENTS

we had produced purchase invoices file during the audit which was conducted u/s 65 of CGST by GST Audit department AP-49 Circle-VII since the audit

proceeding were conducted in the period of Covid- 19 Pandemic so the physical copies of all invoices not returned to us.

During the Proceeding at range respected superintendent not given sufficient time for produce all purchase invoices since the period of proceeding is the inception of GST we had not aware regarding the provision of GSTR-2A and now we are in the process to again collecting the all invoices/ confirmation Ledger during the time order was adjudicated by superintendent however in the personal hearing also we had produced Purchase invoices and Rate Difference ledger for Para 4 issue during the personal hearing we had explained regarding purchase invoices and Ledgers that we will produce remaining invoices.

#### 04. DIFFERENCE IN RECONCILIATION IN GSTR 9 C RETURN

During the course of Audit for the period July 17 to March 18, it was observed that we had received an amount of Rs. 6,31,345/- as rate difference from a person located in the non-taxable territory. It appeared that the supplier had not discharged the IGST amounting to Rs.1,1,3642 The rate difference amount has been received in relations to transactions from persons located in the non-taxable territory, as seen from the rate difference ledger for the period from July 2017 to March 2018.

In the Order passed by respected superintendent they mentioned that taxpayers (notice) has not submitted any written reply prior to personal hearing, we have received SCN from department as on 03/04/2023 and presented as on 05/04/2023 as mentioned in SCN.

Purchase invoices and other documents which relevant to the ITC we had submitted to the respected superintendent however respected superintendent not considered during passing the order and adjudicate the Proceeding same as given by the GST Audit Department i.e. DIN- 20210364WY000000EADD F. No. CTA/04-60/Cir VII/AP-49/2019-20/987 Dated 16/03/2021.

#### PERSONAL HEARING:

5. Personal hearing in this case was held on 18.10.2023. Shri Ankit Sethiya, C.A. and Shri Jigar S.Bhavsar, Director of M/s. Megh Overseas Pvt. Ltd. appeared in person. They submitted that the credit is admissible as the same is available in GSTR-2A also, but the same is not considered by the adjudicating authority. They further submitted additional submissions and requested to allow credit (ITC) as per circular No.183.

As regards the rate difference, since principal supply is zero rated i.e. export therefore rate difference received is in Foreign currency. Therefore this amount of supply will also be zero rated supply, therefore no tax can be demanded.

In view of the above, they requested to allow appeal and submitted additional submissions.

## 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 as well as at the time of personal hearing and observe that the appellant is mainly contesting with the following:

(i) Demand on Excess availment of ITC of Rs.1,44,189/- {Rs.1,17,131/- IGST + Rs.13,529/- (CGST) + Rs.13,529/- (SGST)},

(ii) Demand of ITC without duty paying documents amounting to Rs.7,91,047/- {Rs.1,90,893/- (IGST) + Rs.3,00,077/- (CGST) + Rs.3,00,077/- (SGST)},

(iii) Demand of Rs.1,13,642/- on difference in Reconciliation in GSTR 9C Return.

Under Section 74(1) of the CGST/GGST Act read with Section 20 of the IGST Act, 2017 along with interest under Section 50(1) of the CGST/GGST Act, 2017 and penalty under Section 74(1) of the CGST Act/GGST Act, 2017 read with Section 122(2)(b) of the CGST/GGST Act, 2017 and Section 20 of the IGST Act, 2017.

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, interest and penalty imposed under the provisions ibid. on the appellant for availment of ITC Excess/without duty paying documents/difference in Reconciliation, is proper or otherwise?

6.3. At the foremost, I observed that in the instant case the "impugned order" is of dated 28-04-2023 and the present appeal is filed on 28.07.2023. 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 Appellant has availed ITC of Rs.1,44,189/- (Rs.1,17,131/- IGST) + Rs.13,529/- (CGST) + Rs.13,529/- (SGST) in excess of what was available to them under GSTR-2A Return/Column 8B (Pt.III) to GSTR-9 Return. It is also observed that the appellant has not submitted any invoices which were not available in GSTR-2A but have taken Credit in GSTR-3B. Further, as per Section 16(2) (a) of the CGST Act, 2017 read with the provisions of Section 20 of the IGST Act, 2017 the appellant is not entitled to ITC if he is not in possession of a tax invoice or debit note or any tax paying document issued by a supplier. In the present case, the noticee failed to submit valid taxpaying document for the difference shown in the SCN amounting to Rs.1,44,189/-. The contention of the Appellant that they had submitted the purchase invoices and other documents which were relevant to the ITC to the adjudicating authority, however, the authority did not consider the same in the impugned order.

6.5 I find that CBIC vide Circular No.183/15/2022-GST dated 27.12.2022 has issued clarifications Clarification to deal with difference in Input Tax Credit (ITC) availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for FY 2017-18 and 2018-19. The difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 of the said Circular which is as under:



*The proper officer shall first seek the details from the registered person regarding all the invoices on which ITC has been availed by the registered person in his FORM GSTR 3B but which are not reflecting in his FORM GSTR 2A. He shall then ascertain fulfillment of the following conditions of Section 16 of CGST Act in respect of the input tax credit availed on such invoices by the said registered person:*

- i) that he is in possession of a tax invoice or debit note issued by the supplier or such other tax paying documents;*
- ii) that he has received the goods or services or both;*
- iii) that he has made payment for the amount towards the value of supply, along with tax payable thereon, to the supplier. Besides, the proper officer shall also check whether any reversal of input tax credit is required to be made in accordance with section 17 or section 18 of CGST Act and also whether the said input tax credit has been availed within the time period specified under sub-section (4) of section 16 of CGST Act.*

4.1 In order to verify the condition of clause (c) of sub-section (2) of Section 16 of CGST Act that tax on the said supply has been paid by the supplier, the following action may be taken by the proper officer:

4.1.1 In case, where difference between the ITC claimed in FORM GSTR-3B and that available in FORM GSTR 2A of the registered person in respect of a supplier for the said financial year exceeds Rs 5 lakh, the proper officer shall ask the registered person to produce a certificate for the concerned supplier from the Chartered Accountant (CA) or the Cost Accountant (CMA), certifying that supplies in respect of the said invoices of supplier have actually been made by the supplier to the said registered person and the tax on such supplies has been paid by the said supplier in his return in FORM GSTR 3B. Certificate issued by CA or CMA shall contain UDIN. UDIN of the certificate issued by CAs can be verified from ICAI website <https://udin.icai.org/search-udin> and that issued by CMAs can be verified from ICMAI website <https://eicmai.in/udin/VerifyUDIN.aspx>.

4.1.2 In cases, where difference between the ITC claimed in FORM GSTR-3B and that available in FORM GSTR 2A of the registered person in respect of a supplier for the said financial year is upto Rs 5 lakh, the proper officer shall ask the claimant to produce a certificate from the concerned supplier to the effect that said supplies have actually been made by him to the said registered person and the tax on said supplies has been paid by the said supplier in his return in FORM GSTR 3B.

4.2 However, it may be noted that for the period FY 2017-18, as per proviso to Section 16(4) of CGST Act, the aforesaid relaxations shall not be applicable to claim of ITC made in the FORM GSTR-3B return filed after the due date of furnishing return for the month of September, 2018 till the due date of furnishing return for March, 2019, if supplier had not furnished details of the said supply in his FORM GSTR-1 till the due date of furnishing FORM GSTR 1 for the month of March, 2019."

6.6 From the above clarification, I am of the view that the adjudicating authority is required to follow the above procedure for handling the difference in GSTR-2A Versus GSTR-3B.

6.7 Further, as regard to availment of ITC without duty paying documents Rs.7,91,047/-, I observe that the adjudicating authority in the present case, has found that the Appellant failed to submit valid tax, paying document for the difference shown in the SCN amounting to Rs. 7,91,047/-. I observe, that the said difference is again arising out of the GSTR-3B Versus documents required showing the duty payment, which I am of the view that the same is required to be checked as per the procedure of Circular No. No.183/15/2022-GST dated 27.12.2022 *ibid*.

6.8 Further, as regard to Difference in reconciliation in GSTR 9C amounting to Rs.6,31,345/- as rate difference from a person located in the



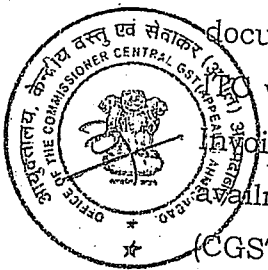
non-taxable territory, the adjudicating authority has found that the appellant has received Rs. 6,31,345/- from a person located in non-taxable territory. In terms of Notification No. 10/2017-Integrated Tax (Rate) Dt. 28.06.2017, it is mentioned at Sr.No.1 that the recipient in taxable territory is required to pay IGST on the amount received from a person located in a non-taxable territory. Thus the Appellant is liable to pay IGST of Rs.1,13,642/- on recipient basis on the amount of Rs. 6,31,345/- received by them as rate difference from persons located in non-taxable territory and ordered for recovery of the same.

6.9 In this regard, the appellant has contended that since principal supply is zero rated i.e. export therefore rate difference is received in Foreign currency. Therefore, this amount of supply will also be zero rated supply, therefore no tax can be demanded. Further, the appellant has provided copies of Shipping Bills, Invoices and Bank realization statements, in support of their claim.

6.10 Therefore, I am of the view that the appellant is not liable for payment of IGST, if the said remittance received in foreign currency is related to zero rated supply. However, I am of the view that the same is available to the appellant subject to verification of the documents by the proper officer.

6.11. In view of the above, I find that as the appellant have submitted the documents before me, with regard to Excess availment of ITC/ Availment of ITC without duty paying documents e.g. Purchase Invoices, List of purchase Invoices. Hence, the impugned order confirming (i) Demand on Excess availment of ITC of Rs.1,44,189/- { Rs.1,17,131/- IGST) + Rs.13,529/- (CGST) + Rs.13,529/- (SGST)} and (ii) Demand of ITC without duty paying documents amounting to Rs.7,91,047/--{Rs.1,90,893/- (IGST) + Rs.3,00,077/- (CGST) + Rs.3,00,077/- (SGST) under Section 74(1) of the CGST Act, 2017 read with the provisions of IGST Act, 2017 along with interest and penalty needs to be set aside in terms of Circular No.183/15/2022-GST dated 27.12.2022.

6.12 I also find, that the appellant has submitted documents before me with regard to (iii) demand of Rs.1,13,642/-with regard to difference in reconciliation in GSTR 9C amounting to Rs.6,31,345/- as rate difference from a person located in the non-taxable territory under Section 74(1) of the CGST Act, 2017 read with the provisions of IGST Act, 2017 along with interest and



penalty, also needs to be set aside, since the remittance received in foreign currency is due to rate difference in foreign currency on the date of realization which is related to zero rated supply.

7. In view of above discussions, I allow the appeal of the "Appellant" to the above extent, with a direction to submit all the relevant documents/submissions before the adjudicating authority for verification of the facts, who shall verify the facts as directed above and pass order accordingly. The adjudicating authority may also take up the matter with concerned jurisdictional officer as provided in Circular No.183/15/2022-GST dated 27.12.2022.

8. The impugned order passed by the adjudicating authority is modified to the above extent.

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

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

*Adesh Kumar Jain*  
20/11/2023

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

Date: 30/11/2023

ATTESTED.

*Sunita D. Nawani*  
(SUNITA D. NAWANI)  
SUPERINTENDENT  
CGST & C.EX.(APPEALS),  
AHMEDABAD.



By R.P.A.D.

M/s.Megh Overseas Pvt.Ltd. A/43, ADITYA RESIDENCY,  
NR SWAGAR GREENVILLA, THEALTEJ, Ahmedabad,  
Gujarat, 380059 (GSTIN 24AAJCM2943C1ZR.)

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-VII, Ahmedabad-North Commissionerate.
5. The Superintendent, CGST & C.Ex, AR-I Division-VII, Ahmedabad-North Commissionerate
6. The Superintendent (Systems), CGST Appeals, Ahmedabad, for

✓ G. File

