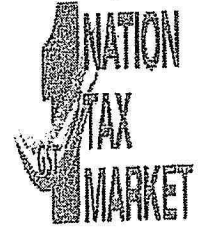




सत्यमेव जयते

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

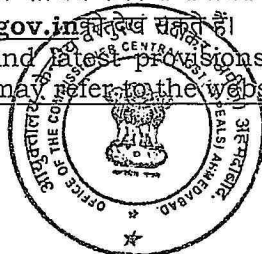


By Regd. Post

DIN NO.: 20231264SW000000F0AB

(क)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTP/2834/2023 19943-48
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-CGST-002-APP-JC-116/2023-24 and 19.12.2023
(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	27.12.2023
(ङ)	Arising out of Order-In-Original No. 151/DC/D/VM/22-23 dated 25.05.2023 passed by The Deputy Commissioner, CGST, Division-III, Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Mitsubishi Electric Automotive India Pvt Ltd (GSTIN: 24AABCM8474A1ZP), Plot No. 1059-1060, Sanand-II Industrial Estate, GIDC BOL, Ahmedabad-382110

(A)	इस आदेश(अपील) से ब्यथित 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 www.cbic.gov.in पर विवरण 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. Mitsubishi Electric Automotive India Pvt. Ltd, Plot No. 1059-1060, Sanand-II Industrial Estate, GIDC BOL, District-Ahmedabad-382110 (hereinafter referred to as "*the appellant*"), holding GST Number 24AABCM8474A1ZP has filed appeal against Order-In-Original No. 151/DC/D/VM/22-23, dated 25.05.2023 (date of communication of the order appealed against is 21.06.2023) (hereinafter referred to as the ("*impugned order*") passed by the Deputy Commissioner, CGST & C.Ex., Division-III, Ahmedabad-North Commissionerate (hereinafter referred to as the "*adjudicating authority*") .

2(i). The facts leading to this case are that the appellant is engaged in manufacturing and supply of Electrical ignition or starting equipment of a kind used for spark-ignition or compression ignition internal combustion engines (8511); electric motors and generators (excluding generating sets) (8501), taps, cocks, valves and similar appliances for pipes, boiler shells, tanks, vats or the like, including pressure-reducing valves and controlled valves (8481). Further, the appellant are paying tax for legal, consultancy, import of service, freight (GTA) etc, under RCM. The audit of the records of the appellant was conducted for the period from July-2017 to Mar-2020. The objection raised is detailed in the notice regarding Wrong availment of Input Tax Credit ('ITC') with respect to blocked credit. It was noticed that the appellant had availed ITC on inward supplies relating to construction and works contract amounting to Rs.1,28,53,246/-.

2(ii). The appellant had given a works contract for the construction of their building and other related works in their premises to one M/s. Takenaka India Pvt Ltd. ("Takenaka'). The details of the nature of work and the corresponding value are detailed as under:

- (a) Land Levelling for Rs.21404069/-
 - (b) Design construction work for Rs.469968227/-
 - (c) Electrical works for Rs.127082631/-
 - (d) HVAC Works for Rs.64928838/-
 - (e) Fire Fighting Works for Rs.25746087/-
 - (f) Utility Works for Rs.54477361/-
 - (g) Plumbing works for Rs.13392786/-
- (Above figures are for Contract value only)



The appellant stated that the expenses were under the head 'Fixed Assets' and they were claiming depreciation, in terms of the Income Tax, 1961. It was further stated they had availed ITC for the work relating to Points numbered (c) to (g) mentioned above.

3. Accordingly, the appellant was issued Show Cause Notice No. 162/21-22 dated 29.03.2022. The notice has been adjudicated by the adjudicating authority vide the impugned order No. 151/DC/D/VM/22-23, dated 25.05.2023 and confirm the demand on the following grounds:-

- *The noticee had availed ITC on inward supplies relating to construction and works contract amounting to Rs.1,28,53,246/-. However, there is a specific exclusion for availing ITC relating to certain nature of work specified in Sections 17(5)(c) and (d) of the Act which says that ITC relating to works contract services when supplied for construction of an immovable property and supplies received for construction of an immovable property would not be eligible as ITC;*
- *the generalized interpretation of Section 16 of the act implies that that noticee would be entitled to credit of input tax charged on any supply of goods or services made to or used by the noticee in the furtherance of business. However, this is subject to the conditions and restrictions as specified in Section 16(2) and Section 17(5) of the act which specifies the situations where ITC shall not be available to the noticee;*
that the nature of work contracted to Takenaka is primarily construction of a building in their premises. Hence, the inward supplies are for construction of an immovable property and therefore, primarily fall within the exclusion clause for the eligibility of ITC;
- *that components such as installation, excavation, approvals, fabrication, testing, test report, liasioning with Electricity board, getting approvals from State Electricity Board etc; are included in the scope of the work contracted to M/s Takenaka; whose cost is inherently included in the contract value and the noticee has also further claimed ITC on the same. Herein, I am of the view that these are not qualified to be eligible for claiming ITC in terms of Section 16 of the CGST Act and are exclusions under the Act. For, the same I also rely on the ruling upheld by the AAA R, Karnataka in the case of M/s Tarun Realtors Pvt. Ltd. 2020 (3) TMI 981. Hence, the noticee is ineligible for the ITC on the inward supplies amounting to Rs.12853246/-*
- *various items, parts, equipments are attached/fitted to set up one system and these system are intact/fixed and cannot be shifted from one place to*



another without dismantling/cutting/removing wires and switch boards/ventilation system/air conditioning system/electrical fittings/fixtures etc. That the system assembled, erected and attached to the earth by a foundation is immovable property and supply is covered within the definition of works contract supply as per the test of permanency as defined by the Hon'ble Supreme court [2011 (267)ELT (435)(SC)] and the system set up thus becomes the part of immovable property, Thus these various parts, equipments are not plant and machinery but part of systems and ultimately part of an immovable property.

- That the noticee has contravened the provisions of Sections 16(1) of the Act read with the provisions of Section 17(5)(c) and (d) of the Act as they have wrongly availed ITC which was not eligible to them; and • Sections 39(7) of the Act read with the provisions of Rules 85(3) of the CGST Rules, 2017 and Gujarat SGST Rules, 2017 (collectively 'Rules') as they have failed to pay tax to the Government account within the prescribed due dates;

that the noticee have wrongly availed ITC despite having knowledge that the works contract was for an immovable property. It appears that they have willfully mis declared the facts by wrongly availing ITC which was not eligible to them in terms of the provisions of Section 17(5)(c) and (d) of the Act. It appears that there is intent to wrongly avail ITC.



4. Being aggrieved with the impugned order, the appellant preferred this appeal on 20.09.2023 on the grounds, which are reproduced in the following paragraphs:

- that the Impugned Order is bad in law as well as on facts inasmuch it has failed to correctly appreciate the applicable legal provisions and is liable to be quashed and set aside on this ground alone;
- Impugned Order failed to appreciate that the ITC of Rs.1,22,50,570/- availed on electrical works, HVAC works, fire fighting works and utility works provided by TIPL is admissible under the provisions of Sections 16 read with Section 17 of the CGST Act;
- that these equipment and apparatus qualify as "plant and machinery" and therefore, ITC availed for setting up such plant and machinery is not restricted by Sections 17(5)(c) or 17(5)(d) of the CGST Act;
- the supply and installation of electrical equipments, HVAC equipments, fire fighting equipments and utility equipments are essential for initiating the production at the factory of the Appellants and eventually, the supply of

taxable goods from the Sanand factory of the Appellants. It is also not disputed in the show cause notice nor observed in the Order-in-Original that the goods and services received from TIPL are used by the Appellants in the course of furtherance of business. Thus, there is no dispute in so far as the eligibility for ITC under Section 16 of the CGST Act is concerned;

- ITC would be eligible in respect of "plant and machinery" even if the said plant and machinery is an immovable property;
- Even if for the sake of argument, it is accepted and assumed that what is received are not individual items but parts of systems that are ultimately fixed to earth, the same would not exclude the works in question from the ambit of "plant and machinery". The electrical, HVAC, utility and fire fighting equipments U installed at the Sanand factory are required for operating the factory. These facilities serve a specific role in the course of furtherance of business of the Appellants i.e. manufacture and supply of taxable goods. The above factual premise has been disregarded in the Impugned Order;
- that none of these apparatus, equipment or machinery qualify as land, building or any other civil structures; telecommunication towers; and pipelines laid outside the factory premises;

In view of the above, the ITC of Rs.1,22,50,570/- on supply and installation of electrical equipments, HVAC equipments, fire fighting equipments and utility equipments has been rightly availed by the Appellants as the same are covered within the ambit of "plant and machinery" and thus, covered by the exclusion clause to the blocked credits under Section 17(5)(c) and 17(5)(d) of the CGST Act, 2017. In view of the same, there is no restriction to avail ITC of such amount under Section 17(5) of the CGST Act and the Appellants have availed proper ITC under Section 16(1) of the CGST Act;

- The Appellants submit that the Impugned Order has failed to demonstrate as to how the entire supplies received under the purchase orders for supply and installation of electrical equipments, HVAC equipments, fire fighting equipments and utility equipments amount to construction of an immovable property. In absence of any corroborative evidence to support such allegation, the same is baseless and liable to be quashed;
- The Hon'ble Courts have laid down on multiple occasions that when the relevant facts emerge from the records maintained by the Appellants and made available to the Department, then the element of willful misstatement cannot be alleged against the Appellants. In the case of



Mega Trends Advertising Ltd. v. CCE & ST, Lucknow - 2020 (38) GSTL 57 (Tri. All.);

- *the Department has failed to provide any evidence or basis for alleging that the Appellants have willfully misstated facts with any mala fide intent. In view of the above, the proceedings initiated by the show cause notice are liable to be dropped on the ground that the necessary elements required to invoke Section 74 of the CGST Act do not exist in the present case;*
- *The actions of the Appellants are completely bona fide nature and there is no intent to evade any tax or wrongly avail any ITC. Reliance is placed on the judgment of the Hon'ble Supreme Court in the case of Padmini Products v. CCE reported at 1989 (43) ELT 195 (SC) and Jai Prakash Industries Limited v. CCE - 2002 (146) ELT 481 (SC);*
- *The Appellants also place reliance on the decision of the Hon'ble Supreme Court in the case of Pahwa Chemicals v. CCE - 2005 (189) ELT 257 (SC). The Hon'ble Supreme Court held that mere failure to declare does not amount to misdeclaration or wilful suppression;*

With respect to the ITC of Rs.1,22,50,570/- the Appellants submit that in view of the submissions made herein supra, the ITC has been correctly availed and there is no liability to reverse such ITC. It is settled law that where there is no demand of tax, the interest liability cannot survive;

In view of the above, the appellant pray to Quash and set aside the Impugned Order-in-Original No. 151/DC/DNM/22- 23 dated 25.05.2023.

Personal Hearing:

5. The appellant was granted personal hearing on 18.10.2023 and 30.10.2023. Mr. Ambarish Pandey, Advocate, appeared for hearing in the matter as authorized representative on behalf of the appellant. During the hearing they stated that the ITC credit disallowed was for the goods and services for the plant and machinery for use in furtherance of business therefore ITC is admissible to them as these services/goods are for plant and machinery which is excluded from the scope of Section 17(5)(c) &(d). He further re-iterated the written submissions and requested to allow appeal.

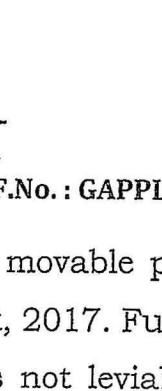
Discussion and Findings:

6. 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 find that the appellant is mainly contesting for allowing ITC of Rs.1,28,53,246/- as according to the appellant, it is pertaining



to Plant & Machinery and the same is movable property, and is not blocked under section 17(5)(c)(d) of the CGST Act, 2017. Further, interest under Section 50(1) of the CGST/GGST Acts, 2017 is not leviable and penalty in terms of Section 74 of the CGST/GGST Acts, 2017 read with section 122(2)(b) of the CGST/GGST Acts, 2017 is not leviable as they have rightly availed ITC without mala-fide intention or by reason of fraud or any wilful misstatement or suppression of facts.

7. In the instant case, it is observed that the appellant is engaged in manufacturing and supply of Electrical ignition or starting equipment of a kind used for spark-ignition or compression ignition internal combustion engines (8511); electric motors and generators (excluding generating sets) (8501), taps, cocks, valves and similar appliances for pipes, boiler shells, tanks, vats or the like, including pressure-reducing valves and controlled valves (8481). The objection raised is regarding Wrong availment of Input Tax Credit ('ITC') with respect to blocked credit. It was noticed that the appellant had availed ITC on inward supplies relating to construction and works contract amounting to Rs.1,28,53,246/-. The appellant had given a works contract for the construction of their building and other related works in their premises to one M/s. Takenaka India Pvt Ltd. ('Takenaka'). The details of the nature of work and the corresponding value are detailed as under:

- 
- (a) Land Levelling for Rs.21404069/-
 - (b) Design construction work for Rs.469968227/-
 - (c) Electrical works for Rs.127082631/-
 - (d) HVAC Works for Rs.64928838/-
 - (e) Fire Fighting Works for Rs.25746087/-
 - (f) Utility Works for Rs.54477361/-
 - (g) Plumbing works for Rs.13392786/-
- (Above figures are for Contract value only)

Further it is observed that the appellant stated that the expenses were under the head 'Fixed Assets' and they were claiming depreciation, in terms of the Income Tax, 1961 and they had availed ITC for the work relating to Points numbered (c) to (g) mentioned above.

8. To understand whether ITC of Rs.1,28,53,246/- is available under Section under Section 17(5)(c)(d) of the CGST/GGST Acts, 2017 or otherwise, I refer Section 17(5) (c) (d) which is as under:

CHAPTER V INPUT TAX CREDIT

"17. Apportionment of credit and blocked credits.—

(5) Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit **shall not be available in respect of the following, namely:—**

(c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service”.

(d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

Explanation. — For the purposes of clauses (c) and (d), the expression “construction” includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;

Explanation. — For the purposes of this Chapter and Chapter VI, the expression “plant and machinery” means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes —

- (i) land, building or any other civil structures;
- (ii) telecommunication towers; and
- (iii) pipelines laid outside the factory premises”.

9(i). As Works Contract service is involved in the above, I have to refer to the definition of the Works Contract as per CGST Act, 2017 which is as under:

“(119) —works contract means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any **immovable property** wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract”.

9(ii). The Immovable property has not been defined in the GST Act. The definition of Immovable property is given in Clause 3(26) of General Clauses Act, 1897 which says that “land and benefits arising out of land and things attached to earth permanently fastened to anything attached to the earth”.

As per Section 3 of the Transfer of Property Act, 1882, the phrase “attached to earth” means:

- (a) Rooted in the earth, as in the case of trees and shrubs;



- (b) Imbedded in the earth, as in the case of walls or buildings;
or
(c) Attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached.

10. It is observed that the appellant had availed ITC on inward supplies relating to construction and works contract amounting to Rs.1,28,53,246/-. However, there is a specific exclusion for availing ITC relating to certain nature of work specified in Sections 17(5)(c) and (d) of the Act which says that ITC relating to works contract services when supplied for construction of an immovable property and supplies received for construction of an immovable property would not be eligible as ITC. Further as per Section 16 of the act implies that that the appellant would be entitled to credit of input tax charged on any supply of goods or services made to or used by the appellant in the furtherance of business.

11. The nature of work contracted to Takenaka is primarily construction of a building in their premises. Hence, the inward supplies are for construction of an immovable property and therefore, fall within the exclusion clause for the eligibility of ITC. The components such as installation, excavation, approvals, fabrication, testing, test report, liasioning with Electricity board, getting approvals from State Electricity Board etc are included in the scope of the work contracted to M/s Takenaka, whose cost is inherently included in the contract value and the appellant further claimed ITC on the same. In view of the above, it is observed that these are not qualified to be eligible for claiming ITC in terms of Section 16 of the CGST Act and are exclusions under the Act. Hence, the appellant is ineligible for the ITC on the inward supplies amounting to Rs.1,28,53,246/-

12. The Immovable property has not been defined in the GST Act. The definition of Immovable property is given in Clause 3(26) of General Clauses Act, 1897 which says that "land and benefits arising out of land and things attached to earth permanently fastened to anything attached to the earth". In the instant case, various items, parts, equipments are attached/fitted to set up one system and these system are intact/fixed and cannot be shifted from one place to another without dismantling/cutting/removing wires and switch boards/ventilation system/air conditioning system/electrical fittings/fixtures etc. That the system assembled, erected and attached to the earth by a foundation is immovable property and supply is covered within the definition of works contract supply as per the test of permanency as defined by the Hon'ble Supreme court [2011 (267)ELT (435)(SC)] and the system set up thus becomes



the part of immovable property, Thus these various parts, equipments are not plant and machinery but part of systems and ultimately part of an immovable property.

13. In view of the above, the appellant has contravened the provisions of Sections 16(1) of the Act read with the provisions of Section 17(5)(c) and (d) of the Act as they have wrongly availed ITC which was not eligible to them as the works contract was for an immovable property. Further the contentions of the appellant on relied upon various judgement are not squarely applicable in this case. In the instant case it is observed that the appellant has violated provisions of Section 17(5)(c) and (d) and Sections 16(1) of the CGST Act, 2017. It may further stated that the appellant is well versed with the GST laws and provisions to taxations. They should have taken reasonable steps to ensure genuineness of ITC being availed by them.

14. 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.

Asa
19/12/2023
(Adesh Kumar Jain)

Joint Commissioner (Appeals)

Date: 19.12.2023

Attested

AS
(Sandheer Kumar)
Superintendent (Appeals)

By R.P.A.D.

To

M/s. Mitsubishi Electric Automotive India Pvt. Ltd,
Plot No. 1059-1060, Sanand-II Industrial Estate,
GIDC BOL, District-Ahmedabad- 382110.

Copy to:-

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner [Appeals], CGST & C. Ex., Ahmedabad.
3. The Commissioner, CGST & C. Ex., Ahmedabad-North.
4. The Deputy Commissioner, CGST & C. Ex, Division-III, Ahmedabad-North.
5. The Superintendent [Systems], CGST (Appeals), Ahmedabad.
6. ~~Guard File/ P.A. File.~~

